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Achieving a Balance

Report of Ministerial Advisory Committee on Residential Tenancies

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Alberta

CONSUMER AND
CORPORATE AFFAIRS
Ministerial Advisory Committee on Residential Tenancy

c/o Lethbridge Regional Office, Bag Service 3014, Lethbridge, Alberta T1J 4C7

April, 1990

The Honourable Dennis Anderson
Minister of Consumer and Corporate Affairs
Room 229, Legislative Building
Edmonton, Alberta
T5K 2B6

Dear Sir:

Re: **Ministerial Advisory Committee on Residential Tenancy**

We are pleased to submit to you the Report of the Ministerial Advisory Committee on Residential Tenancy entitled "Achieving A Balance".

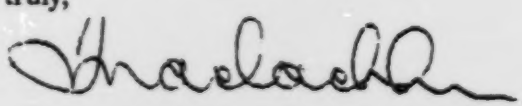
This report represents a consolidation of a large body of analysis and research reviewed by the Committee during it's mandate.

We submit the report for your review and it is our sincere desire that it will be followed by implementation in the form of revised legislation.

We are of the view that public sharing of this report will serve to continue the original commitment of your department of open consultation in this process with the citizens of Alberta.

We have been pleased to be part of this project. We hope that the recommendations will serve to be the framework of landlord and tenant legislation that will serve Albertans for many years to come.

Yours truly,

PER: 

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1. EXECUTIVE SUMMARY

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ACHIEVING A BALANCE

1.1 Introduction

The Ministerial Advisory Committee on Residential Tenancies was appointed on January 5, 1989 by the then Minister of Consumer and Corporate Affairs, the Honourable Elaine J. McCoy. The Committee members were:

1. Thomas B. MacLachlan, Lawyer, Lethbridge, Chairman
2. Nancy Kotani, Director of Health Promotion, Edmonton Board of Health, Tenant Representative.
3. William Partridge, Executive Director, Building Owners & Managers Association, Calgary, Landlord Representative.
4. Doug Holmes, Manager, Sim and Thorne Property Management Ltd., Red Deer, Landlord Representative.
5. Evelyn McLaren, Legal Secretary, Grande Prairie, Tenant Representative.

The purpose of the Committee was to review the Landlord and Tenant Act, R.S.A. 1980, Chapter L-6 (the Act) and provide the Minister with meaningful and thoughtful recommendations regarding changes to the Act and related statutes. The goal of the Committee was to recommend legislative change that:

(a) meets the needs of the communities which the Act serves, and

(b) maintains a balance between the interests of landlords and the interests of tenants.

The C ommittee received written submissions from interested citizens of Alberta, and attended various meetings throughout the Province to speak directly with landlords and tenants about specific concerns. In order to quantify the concerns raised and to accurately identify the characteristics of individuals affected by legislation, the Committee commissioned a survey of landlords, residential managers and tenants.

The Committee discovered that the issues surrounding landlord and tenant legislation were complex and interrelated. In order to properly consider the legislation and provide reasonable recommendations, the Committee found that the original completion date of September 30, 1989, did not provide sufficient time. A final report was given to the Minister of Consumer and Corporate Affairs in April of 1990.

In proposing landlord and tenant legislation that will meet the needs of contemporary Albertans and serve them for at least the next decade, the Committee carefully reviewed statistics concerning landlords and tenants in Alberta. The Committee concluded that a large percentage of the rental population during the next decade will be single parent families or families in marginal economic circumstances who believe that they will always be tenants. These renters are more likely to have problems with their landlords and be less able to pursue their rights in the courts of this Province as they currently exist. Families in these economic circumstances are hampered in their ability to find adequate, comfortable, affordable rental accommodation.

The Committee took the view that landlord and tenant legislation sets minimum acceptable standards for the landlord and tenant relationship. The individuals most likely affected by those minimum standards would be those with lower or fixed

incomes or otherwise inflexible finances. It was the Committee's goal to arrive at recommendations that address the particular problems of the tenant population while recognizing that landlords are the owners of the rental premises and are entitled to make a reasonable profit. In other words, to achieve a balance between the interests of the tenants and their landlords.

1.2 Scope of the Act

Currently, the Act only applies to "self-contained dwelling units". This excludes premises which the Committee believes should be covered by the Act such as rooming and boarding houses or long term hotel residents. A number of problems could be resolved by extending the protection of the Act to these types of accommodations. People who are living exactly as other tenants, except that they are not living in "self-contained" premises would gain protection under the Act, while particular types of premises will still be excluded where there are practical reasons for such an exclusion. For example, hospital rooms and correctional institutions might fall within a broad definition, but would be excluded specifically from the operation of the Act. Therefore, the Committee recommends that the Act should define "residential premises" as broadly as possible while excluding premises which should not be covered by the Act such as hospital rooms and correctional institutions.

The present Act does not define the terms "landlord", "tenant", or "rent". The Committee believes that in order to properly apply the principles contained in the current Act, and the recommendations which are contained in this Report, these words should be defined in the Act. Specific definitions for each are recommended

by the Committee, and these definitions should assist both landlords and tenants when they use the Act.

The Committee believes that the renting of residential premises should be the sole focus of this Act. Given the scope of the recommendations which are contained in the Report, the Committee recommends that the current Landlord and Tenant Act be abolished and a new Act, "The Residential Tenancies Act", be created in its place. The current Act makes reference to both commercial and residential tenancies, but it is rarely used in commercial transactions. Commercial tenancies may be governed by another Act or by the negotiated terms of the lease contract.

1.3 Landlord's Rights and Obligations

The Committee believes that the covenants and the responsibilities of the landlord that are described in the present Act should be maintained, but that other obligations should be added. Chief among these additions is the obligation of the landlord to repair and maintain the residential premises throughout the tenancy.

The Committee's initial perception was that security deposits were the chief problem with the current legislation. However, the survey of tenants revealed that the failure of the landlord to repair and maintain the residential premises was the most common complaint of the tenants. The current Act places no duty on the landlord to maintain the premises during the term of the tenancy. The only obligation that the landlord has is to provide the tenant with "habitable" premises at the beginning of the tenancy. The Committee does not believe that it is unreasonable to expect a landlord to carry out repairs and maintenance which would keep the premises in a state of repair that complies with, at least, the

minimum standards acceptable in the community. If the landlord was given this obligation, then the tenant would have grounds to use the remedies already in the Act to enforce this obligation.

The Committee therefore recommends that the landlord should have the additional obligation to "keep the premises, including common areas, in a reasonable state of repair and fit for habitation and shall comply with any statutory enactment or law respecting standards of health, safety, or housing". A great number of the concerns raised by tenants could be solved with this change, while not substantially infringing on the freedom of a reasonable landlord to deal with the property as he sees fit.

The Committee considers that a reduction in the amenities or collateral services that are rented with the residential premises is the equivalent of a rent increase. As a result, the Committee recommends that services such as, parking, cable television, and swimming pools to name a few, should not be reduced or eliminated without the same notice that is required for a rental increase (three months). Furthermore, the Committee recommends that landlords should be required to maintain the standard of the suite as it existed at the beginning of the tenancy, subject to normal wear and tear. The Committee believes that, in this way, the tenant would have some measure of certainty with respect to what he was actually renting, while the landlord would still be able to adjust the rental "package" as he sees fit, after notice to the tenant.

The Committee found that the landlord's right to enter the rental premises has occasionally been abused, severely infringing on the affected tenant's right to privacy. The current Act provides that the landlord can enter the premises with the consent of the tenant, or in case of an emergency. If either of those conditions

does not exist, the landlord may enter after giving at least 24 hours notice to the tenant. The Committee recommends that the ability to enter on notice be amended. These amendments would require the landlord to state a reason for the requested entry, would restrict the hours within which the landlord may request entry and would prohibit a request for entry on Sundays and holidays.

The Committee was concerned about the use "blanket notices", or notices to enter that cover the entire tenancy. The Committee therefore recommends that a notice for a requested entry be served at least 24 hours before the time of the requested entry and be served no sooner than 30 days prior to the entry. The restrictions on the landlords right to enter would be relaxed during the last month of the tenancy in order to allow the landlord to show the suite to prospective tenants. The Committee believes that the tenant's right to privacy, and the right to treat the rented premises as his home, free of interference by the landlord, are important rights to be preserved by the legislation. The proposals of the Committee with respect to the landlord's entry are intended to protect these rights while still allowing the landlord reasonable freedom to inspect, repair and protect the premises.

A tenant may be given a remedy for a landlord's breach of an obligation, but still be frustrated in enforcing the remedy because the landlord cannot be contacted. The Committee recommends that the name and address for service of the landlord either be posted in the rental premises or otherwise be given to the tenant in writing. Alternatively, the property (fee) manager may be identified to the tenant and his address shall be deemed to be the address for service of the landlord. In this way, the Committee believes that a landlord will not be able to avoid fulfilling the duties required of him under the Act. This recommendation should give the

tenants easier access to remedies under the Act, while respecting the privacy of the landlord.

1.4 Tenant's Remedies

Even though the recommendations in the Report will increase the landlord's obligations, particularly in the area of maintenance and repair, the existing remedies generally provide the tenant with adequate means to enforce those obligations. However, some clarifications are required.

The Committee believes that there must be a reasonably easy method for a landlord and a tenant to resolve disputes arising from the obligation to maintain and repair. The procedure that the Committee recommends allows the tenant to give notice to the landlord, in writing, of a need for a particular item of maintenance or repair. If the landlord does not make the repairs, the tenant can then file a complaint with the Residential Tenancy Commission[1]. The Commission will investigate the complaint, and if it is justified, issue an order to the landlord to make the repairs, or allow the tenant to have the repairs done on behalf of the landlord and set-off the costs of the repairs against the rent due. Alternatively, the tenant will be given the ability to terminate the tenancy on ten days notice. This gives the tenant a method of ensuring that repairs are done, but does not mean that the landlord would have any greater duty to repair and maintain than what is recommended above (p.6). The Committee believes that a reasonable landlord would carry out these repairs even if a tenant did not demand that they be done.

[1] See 11. "Dispute Resolution"

The Committee firmly believes that any decrease in the amenities which were originally rented with the suite amounts to a rent increase and should be subject to the same three month notice period that is required for a rent increase. If the landlord does not give this notice, the Committee recommends that the tenant have the ability to apply for an abatement of rent that will recognize the value of the collateral service that has been removed. This application could be decided by the Residential Tenancy Commission.

The Committee recognizes that tenants are in a difficult position when other tenants in the complex cause disturbances and the landlord takes no step to evict the "problem" tenant causing the disturbances. While it was suggested that a tenant may be allowed to evict another, "problem" tenant, the Committee believes that this kind of provision may cause more problems than it would solve. It is equally unreasonable for the landlord to be placed in the position of arbitrating every dispute that may arise between two of his tenants. The Committee believes that both landlord and tenants should be free to choose the course of action which suits them best in these cases. The current remedies which allow tenants to apply for either rent abatement or damages may be used to compensate the affected tenant in appropriate circumstances.

1.5 Tenant's Rights and Obligations

In keeping with the belief that a tenant should be allowed to treat the rental premises as his home, the Committee feels that the tenant should be able to use the premises for business purposes if that business could ordinarily be carried on in residential premises. This right would be limited by the landlord's ability to

reasonably withhold consent and would be subject to all municipal zoning and by land use by-laws.

Many concerns of the tenant are shared by other tenants in a rental complex. These concerns can be most forcefully brought to the attention of the landlord if tenants act collectively. The Committee found that, until rental increases became an issue in the Province, there were few, if any, tenant organizations. The Committee recommends that the formation of tenant associations should be recognized and approved in the legislation. Landlords should be required to recognize, meet with, and discuss tenant issues with these associations. As a protection for tenants involved in such organizations, landlords should be prohibited from evicting a tenant if one of the reasons for such an eviction is the tenant's involvement in a tenant organization.

The issue of what constitutes legitimate deductions from security deposits arises in the present Act because the tenant's duty to maintain and clean the premises is not clearly stated. Presently, the landlord is not entitled to deduct for items that are considered to be "normal wear and tear". For example, the tenant is responsible for keeping the carpet clean, but is not responsible for the eventual replacement of that carpet. The carpet has a life expectancy and, with normal wear and tear, it will have to be replaced at the end of the life expectancy. Because every person has a different standard of what is "clean", the distinction between what is "normal wear and tear" and what is the tenant's responsibility for cleaning is not always clear.

The Committee recommends that "normal wear and tear" should not include the removal of stains, dirt and debris accumulated by the tenant through the tenant's

style of living. The Committee believes that this definition could be made operational by including an additional obligation of the tenant covenant that will make him responsible for "ordinary cleanliness and maintenance reasonably required under the circumstances and for damage caused by wilful or negligent conduct of the tenant or of the tenant's invitees". These changes will, in the Committee's view, fairly divide the responsibility for cleaning the residential premises between the landlord and the tenant.

1.6 Landlord's Remedies

The principal recommendation of the Committee in respect of the remedies of the landlord is to amend the current procedure for termination of the tenancy for substantial breach by the tenant. The Committee agrees with the landlord who requested a reduction in the length of notice required if the tenant is guilty of a substantial breach of the tenancy agreement. Tenants also told the Committee that they should only benefit from the protection of the Act if they abided by the lease agreement and the Act. The Committee therefore recommends that the present fourteen day notice period be reduced to ten days.

If the reason for the termination notice is non-payment of rent, the tenant will be able to nullify the notice by paying all the rent due within five days of receipt of the notice of termination. If the rent is not paid within those five days, the tenancy will end after the ten day period. The landlord will know much earlier if he must find a replacement tenant.

If the termination notice is for any other cause, the tenant will be allowed to file a notice of objection within the five days. If the notice of objection is not filed within five days, then the termination will be effective on the tenth day.

When a tenant wilfully damages the rental premises, the landlord is often left without a remedy since the security deposit generally does not cover the damages, and the tenant is usually not in a position to pay any judgement against him. Currently, the Act provides for a fourteen day notice period in such cases and landlords, naturally, would prefer to have a speedier eviction procedure. Interestingly, the tenants which the Committee spoke to were generally of the opinion that a tenant who wilfully damages the premises should not be protected under the Act.

The Committee's recommendation is that, where it can be demonstrated that the tenant is causing substantial physical damage to the premises, the landlord should have the ability to evict on a 24 hour notice. The notice would have to be in writing and served upon the tenant personally. The tenant would have an opportunity to object to the notice.

The Committee recommends that the current procedure in the Act for dealing with abandoned goods be clarified and streamlined. The Committee recommends that the dollar value of goods mentioned in the Act be increased to $1,000 and the storage period be reduced to thirty days. In order to make these remedies more functional, the landlord should be able to apply the proceeds of the sale of abandoned goods to any "liabilities" of the tenant rather than a "judgement against" the tenant. To require a landlord to take all the legal steps to obtain a judgement against a tenant who has abandoned the premises tends to make the current

provisions useless to the landlord. If a judgement is not required, the Committee believes that the landlord should still have to justify or prove the liabilities of the tenant to a third party, such as a "taxing officer" or other similar body. If the premises are, in fact, abandoned, the tenant obviously has little interest in the goods left behind. The Committee believes that the recommendations outlined above adequately protect whatever interest the tenant may have in the remaining goods, while giving the landlord greater latitude in dealing with the unwanted goods.

1.7 Security of Tenure

The Committee believes that rental residential premises should be considered to be more than simply a business operated by the landlord. The premises are considered "home" by the tenant during the term of the tenancy. Most tenants take pride in their surroundings and care for the premises as if they were owners. The tenants would like to have the security of knowing that, so long as they comply with their lease agreement, and if there are no extraordinary circumstances, they will be able to stay in the premises as long as they wish. This is security of tenure.

Presently, Alberta tenants have no security of tenure beyond the three month notice required by the landlord to terminate a tenancy without cause. The Committee believes that a reasonable amount of security of tenure can be given to tenants without unduly interfering with the right of a landlord to use the premises as he sees fit. It is not the Committee's intention to recommend a system where a landlord is unable to remove a tenant for any reason. However, the present Act provides a tenant with too few rights with respect to security of tenure, and the Committee's recommendation is aimed at bringing this back into balance.

The Committee recommends that there should be no termination of the tenancy without cause. The Committee heard that landlords believed it would not be in their interest to remove a tenant who pays rent on time and who complies with all the rules and regulations of the premises. Still, since the present Act does not require a landlord to give a reason for the termination, the Committee feels that there has been an alarming number of prejudicial and unnecessary evictions of tenants.

A landlord should not be able to evict except for the following reasons:

a) non-payment of rent;
b) substantially interfering with the rights of other tenants;
c) illegal activities conducted or performed by the tenant on the premises;
d) endangering the health or safety of others on or around the premises;
e) unauthorized physical alterations to the premises;
f) lack of substantial ordinary and reasonable cleanliness;
g) failure to repair damage caused by the tenant's negligence;
h) the landlord requires the residential premises for
    i) demolition,
    ii) conversion to condominium,
    iii) substantial renovations requiring vacant possession,
    iv) any other removal of the rental unit from the rental market for a long term,
    v) sale of the building to a purchaser who is removing the unit from the rental market,
    vi) expropriation,

vii) personal use by the landlord or by the members of the landlord's immediate family;

i) conversion of the complex into an adult's only complex;

j) breach of any lawful term of the lease agreement;

k) wilfull damage to premises by tenant.

The Committee believes that the list of reasons outlined covers all of the possible legitimate reasons which a landlord may have for evicting a tenant and which would be acceptable to the Committee. Any other reason for eviction should be prohibited and the tenant should have a remedy if he is so evicted.

The Committee believed that it would be unreasonable for a landlord to evict a tenant for the following reasons:

a) eviction solely for the purpose of raising rent;

b) discrimination prohibited by federal or provincial legislation;

c) presence of children in the tenant's family;

d) use of residential premises by a friend or acquaintance of the landlord and not the landlord personally or members of his immediate family;

e) retaliatory evictions as a result of the tenant's complaining about the landlords breach of his covenants; and

f) the tenant is involved in a tenant association.

If the tenant can prove that the landlord has terminated the tenancy for substantially one of these prohibited reasons, the tenant should be entitled to damages. The damages would be measured as the tenant's additional rental cost for an appropriate period of time plus moving and other expenses directly associated with a termination.

As far as the particulars of the notice of termination is concerned, the Committee believes that a notice of termination should be able to be served by both the landlord and the tenant on the date that the rent is due, rather than the last day of the tenancy month as is currently required by the Act. Transfer of possession should also be specified in the Act as twelve noon on the last day of the tenancy to allow a reasonable time for tenants to move out and move in.

In landlord and tenant legislation that provides some security of tenure without rent control, unreasonable rent increases may be used by the landlord to circumvent the security of tenure provisions. If a landlord wanted to remove a tenant, and was not able to establish an acceptable reason for eviction, he may decide to arbitrarily increase the rent. If the tenant does not, or is not able, to pay the increased rent, the landlord will then have the proposed ten day notice available to him to evict the tenant. However, the Committee believes that if the tenant is able to show that he was evicted as a result of a rent increase, and this was the intent of the rent increase, the landlord should be responsible for damages based on the tenant's moving and relocation expenses, any increase in rent which the tenant has to pay in the new accommodation, as well as any other costs and expenses directly related to the landlord's actions.

The Committee believes that the problem of proving the intent of the landlord might be difficult for the tenant. Therefore, the Committee recommends that the tenant need only show that the premises were re-let within two months of the tenant vacating the premises for a rate of less than 90% of the new rental rate. Once that is established, the rent increase would be deemed to be a rent increase for the purpose of eviction. The Committee believes that these recommendations will

provide the tenant with an extra measure of security of tenure, while not affecting landlords who act reasonably, and in good faith, when increasing rents.

The Committee also recommends that the protection of the tenant from retaliatory evictions should be expanded to refer to not only the Landlord and Tenant Act and the Public Health Act, but also any other health and safety regulations which apply to residential premises.

Even though the Committee recommends an increase in security of tenure for the tenant, it does not believe that there should be limitations placed on the tenant's ability to terminate a tenancy. The Committee recommends that the present one month's notice by the tenant of his intention to vacate the premises should be maintained.

The Committee heard presentations from resident managers who were concerned that, if they were fired from their job as manager, they would also lose their residence, often on short notice. After reviewing the Act and the Employment Standards Act, the Committee came to the conclusion that the present notice provisions for the termination of an employee tenancy adequately balanced the rights of the tenant and the rights of the landlord. However, the Committee recommends that if the landlord does not comply with the minimum provisions of the Act for the termination of an employee tenancy, that termination should be considered to be an offence under the Act, and the Department of Consumer and Corporate Affairs should recommend prosecutions where warranted.

1.8 Security Deposits

Originally, the Committee believed that security deposit provisions were the most controversial issue within the current Act. However, the survey of tenants indicated that maintenance and repair problems were more common than problems with the security deposit. Still, a significant number of tenants do have problems in this area.

Tenants do not, generally, object to the concept of paying a security deposit. The problems arise when the tenant is forced to pursue the landlord for unjustified deductions from the security deposit. Landlords, on the other hand, strongly believe that the existence of a security deposit provides them with some measure of assurance that tenant would not wilfully damage the premises or abandon the premises without notice.

One solution to the tenant's problems with security deposits would be to abolish the security deposit altogether. When the abolition of security deposits was considered in Ontario, there was some evidence that the presence or absence of a security deposit did not affect the amount of damage that tenants caused. Landlords in Ontario are still protected from arrears of rent because they are able to request a deposit for the last month's rent. Even though the presence or absence of security deposits may not affect whether a tenant causes damage to the premises, the Committee is of the view that landlords, as owners of the premises, are entitled to a security deposit to protect them from tenants who do cause damage. However, there should be amendments made to the way a security deposit is administered in order to more fairly balance the rights of the tenant and the rights of the landlord.

The Committee recommends that the landlord still be able to apply the security deposit to both rental arrears and to damages by the tenant. The amount of the security deposit should be limited to a maximum of the amount of rent paid during the first month of the tenancy. Linking the size of the security deposit to the first month rent would serve to eliminate any confusion about the possibility of the security deposit either having to be "topped-up" by the tenant or refunded by the landlord when rent levels fluctuate. In other words, the Committee recommends that the security deposit be fixed throughout the tenancy.

In order to reduce the number of disagreements concerning deductions from the security deposit, the recommendation of the Committee is that pre- and post-occupancy inspection reports be mandatory. The Committee believes that this would not be too difficult to accomplish since the use of inspection reports is already widespread. If the condition of the premises is noted in writing at the beginning of the tenancy and at the end of the tenancy, both the landlord and the tenant will have a common basis to assess what should be deducted from the security deposit. Furthermore, if a pre- and post-occupancy inspection report is not completed, the landlord should be prohibited from making any deductions from the security deposit for the cost of repairing damages. The landlord would be limited, in that case, to applying the security deposit only to arrears of rent, if any.

Even with the recommendation for mandatory pre- and post-inspection reports, there will still be the need for a prompt and efficient resolution of disputes about security deposits. The present system places the onus on the tenant to pursue the landlord in Provincial Court for deductions that cannot be justified. Tenants believe that the Provincial Court system is too time consuming, is intimidating and is biased in favour of the landlord. Similarly, the landlords believe that the Provincial Court system is

too time consuming and is biased in favour of the tenants. The Committee therefore considered an alternate dispute resolution mechanism for security deposits.

This alternate dispute resolution mechanism (a "Residential Tenancy Commission") could be established to resolve disputes between landlords and tenants regarding security deposits outside of the present court system. By removing landlord and tenant disputes from the courts, concerns raised by both landlords and tenants could be met. Time frames for the final resolution of the dispute could be reduced significantly since the proposed Commission would only be dealing with landlord and tenant matters. The onus could be placed on the landlord to establish that the deduction was proper rather than as now when it is on the tenant to establish it was not. Bureaucracy could also be significantly reduced.

With respect to the deposit itself, the Committee recommends that, at the very least, the landlord be required to hold the security deposit in trust. This may provide the tenant with some confidence that his security deposit is safe from such things as the bankruptcy of the landlord. If a dispute arose about a deduction from a security deposit, the landlord would be required to pay the disputed amount to the Commission and the money would be distributed in accordance with the Commission's final decision. Unfortunately, placing the deposits in trust would not always protect the tenant's deposits, and this requirement would place additional costs on those landlord who do not now hold the deposit separately from their general funds.

A better solution, in the Committee's view, to the problem of security deposits would be to require that the entire amount of the security deposit be paid to the

Residential Tenancy Commission rather than being held by the landlord in trust. The advantages of such a scheme are as follows:

1) The Commission would have control over the deposits and would be able to ensure timely resolution of disputes with respect to them;

2) The loss of the security deposit through a landlord's receivership, bankruptcy or fraud would be prevented;

3) A portion of the interest earned on the security deposit funds could be used to finance the Commission operations;

4) The administration of the system could be minimized so that landlords and tenants are not intimidated by bureaucracy;

5) Disputes could be resolved in a summary fashion allowing all interested parties to fully present their positions;

6) The entire landlord and tenant dispute area could be removed from the Provincial Court system allowing it to devote its time to other matters.

Therefore, the Committee makes two alternative recommendations, both of which require the use of pre- and post-occupancy reports and the existence of a Residential Tenancy Commission:

a) At a minimum, the landlord should hold the security deposit in trust, and if a dispute arises, pay the disputed amount into the Residential Tenancy

Commission pending a decision. Requiring that the money be placed in trust would provide the tenant with some assurance that the security deposit funds would not be at risk through a landlord's bankruptcy.

b) That the entire amount of the security deposit be paid directly to the Residential Tenancy Commission. This would allow complete protection of the tenant's interest in the security deposit and would provide the Residential Tenancy Commission with the funding to carry out a wide-ranging mandate with respect to landlord and tenant matters.

1.9 Rent Increases and Rent Control

During the course of the Committee's activities, vacancy rates especially in Calgary and Edmonton, decreased significantly. As a result of the tightening rental market, landlords began increasing the rent on residential premises. Rent increases of 25%, 30%, 40% and even 50% were reported. This, in turn, caused tenants to demand some form of rent review or rent control.

The Committee reviewed a great deal of information on this subject and came to the conclusion that rent control was not an appropriate response to the current market conditions.

It is the Committee's view that the open market conditions in this Province have allowed rent levels be set by the relative supply and demand for rental accommodation and this has prevented "gouging" by landlords. An historical analysis of rent levels in the City of Calgary, for example, has revealed that, even with the current round of 20% to 30% rent increases, the rental rates are still below the rent

that was paid for those same units in 1980 or 1981. Rent levels fluctuate with the strength of the Alberta economy.

The Committee sympathizes with the concern of low and fixed income earners who are the least able to accommodate a rent increase. Rent control would reduce the size of rent increases which a landlord could demand, and may give these tenants some short term relief from very large increases. However, the long-term effect of rent control, as shown in the jurisdictions and in the literature which the Committee reviewed, is that construction of rental housing is stifled. Therefore, with rent control in the long term, the supply of adequately maintained, affordable rental housing is reduced. On this basis, the Committee does not believe that rent control will assist tenants, even those on low and fixed income, in the long term. The Committee suggests that a better response to the current economic conditions would be to directly assist those tenants who are adversely affected by large rent increases. For example, the supply of subsidized housing could be increased or a program of direct rent subsidization could be implemented.

The Committee found that, usually, tenants did not object to paying an increased rent. They did object, however, to receiving a single large rent increase notice. There was also concern that some tenants were receiving rent increase notices on almost a monthly basis. The Committee's view is that a balance should be struck between the tenant's request for some "breathing room" between rent increases and the landlord's right to increase rents when the landlord deems it appropriate. The Committee therefore recommends that the landlord be prohibited from increasing the rent more frequently than three tenancy months after any prior increase. This would allow the landlord to increase the rent at most four times a year, and allow the tenant to budget his finances for at least a three month term.

1.10 Dispute Resolution

The Committee believes that it would be advantageous for landlords and tenants if a single body was established to deal with all landlord and tenant disputes. An earlier recommendation suggested that an alternate body could be established to deal with security deposit disputes. As a result of court decisions in Alberta, Ontario, and from the Supreme Court of Canada, there is concern that the Province of Alberta may not be able to create a Residential Tenancy Commission that has the power to give eviction notices and grant orders of possession. These powers are important if the Residential Tenancy Commission is to comprehensively deal with the landlord and tenant relationship in Alberta.

The Committee examined the constitutional issues surrounding orders of possession and eviction notices and concludes that it may be possible, through careful drafting of the powers of the Residential Tenancy Commission to validly enable it to give orders for possession and eviction notices.

It is the Committee's recommendation that a Residential Tenancy Commission be established with a broad scope, including the power to give orders for possession and eviction notices. Failing this, the Committee believes that the Residential Tenancy Commission should be given the broadest scope possible and that all issues that currently can be dealt with by the Provincial Court should be given to this Commission.

1.11 Other Issues

1.11.1 Subsidized Public Housing

The Committee decided it was necessary to specifically recognize the special status of subsidized public housing in Alberta. As a result, the Committee makes recommendations for special exceptions for subsidized public housing in respect of security deposits, rent increases, and termination of tenancies. In order to properly administer the programs for the benefit of subsidized tenants, the Committee believes that it is appropriate to give subsidized public housing authorities greater scope in these areas.

1.11.2 Licensing of Property Managers

The Committee has observed vast differences in the treatment of tenants and in the quality of property management throughout the Province. Furthermore, large sums of money are held by property managers from security deposits. The Committee proposes that the Real Estate Agents' Licensing Act be amended by adding a section that requires residential property managers to be licensed and regulated. This requirement should result in a fairer treatment of tenants, a more consistent level of property management and ensure the integrity of security deposits.

1.11.3 Resort Communities

As a result of attending a public meeting in Banff, the Committee found that the rental market in that community was unique in Alberta. Although the

workers in Banff are among the lowest paid, they face the highest rents in the Province. To complicate matters they are often given accommodation, as part of their employment package, that is not "self-contained" and which therefore does not come within the jurisdiction of the current Act. The Committee believes that if the scope of the Act is extended as recommended, it will cover the type of worker's accommodation which is common in Banff and other resort communities, and many of the problems experienced by tenants there may be solved.

The rental market in Banff is artificially constrained because of the development policies in National Parks. Not enough rental accommodation can be built so the demand for rental accommodation constantly exceeds the supply. This is compounded as the tourist season in Banff extends through the whole year and businesses expand in Banff. A larger number of businesses require a larger number of workers who place even greater strain on the limited rental market.

This artificial restriction on the supply of rental housing in Banff falls within one of the classic reasons for rent control. The Committee therefore recommends that consultation should take place between the Province of Alberta, the Federal Government and Parks Canada with a view to addressing the housing problems of workers in Banff. A combination of an increased supply of rental accommodations together with some form of rent control should be considered for Banff.

1.11.4 Public Education

One problem that was regularly brought to the attention of the Committee was the lack of knowledge of both tenants and landlords about their basic rights and obligations under the Act. The Committee recommends that the new Act should promote public education on landlord and tenant issues as well as clearly outline the rights, obligations and remedies of both landlords and tenants.

In addition, the Committee felt that the wide-spread use of written lease agreements could be used to help alert tenants to the fact that there is legislation governing their tenancy relationship. The Committee recommends that where there is a written lease document used by the landlord, the lease should contain prominent wording to the effect that "notwithstanding the terms of the lease, the landlord and tenant relationship is governed by the terms of the Residential Tenancy Act".

1.11.5 General Administrative Matters

If the Committee's recommendation for a Residential Tenancy Commission, is accepted, all references to "Court" in the Act could be deleted. Additionally, the Residential Tenancy Commission could take on the educational functions which are currently provided by the Landlord and Tenant Advisory Boards in Alberta. If so, it is the recommendation of the Committee that the Landlord and Tenant Advisory Boards be abolished in their present form and that the Residential Tenancy Commission take their place.

1.12 Concluding Remarks

The Committee believes that its recommendations address the major problems with the current legislation and propose solutions that balance the interests of landlords and their tenants. The recommendations, like the problems they address are interrelated and any single recommendation must be looked at in the context of the whole Report. The plan presented by the Committee should address the concerns of the significant percentage of Albertans who are renters, keeping in mind the characteristics of Alberta tenants while preserving the rights of a reasonable landlord to deal with his property as he sees fit. The Committee believes that the overall effect of their recommendations achieve a balance in landlord and tenant matters in Alberta.

2. INTRODUCTION

2.1 Acknowledgements

The Committee wishes to acknowledge the assistance and support of numerous groups and individuals who assisted us in our review process.

Firstly, the Committee wishes to express its appreciation to Daryl Hanak who acted throughout as the Executive Assistant to the Committee. Daryl provided what at times seemed like an endless stream of research material and data for the Committee's review. Mr. Hanak very ably correlated and organized the submissions, provided the Committee with thought provoking commentary on various issues, and assisted with proofreading and organizing the final draft.

We would also like to express our appreciation to the staff of the Department of Consumer and Corporate Affairs both in Edmonton and in the various regional offices throughout the Province. That staff was of great assistance in various phases of the Committee's activities and also assisted with the scheduling and detailed organization of the community tours. We would especially like to thank the staff of the Lethbridge Regional Office of Consumer and Corporate Affairs for serving as the address for service of the written submissions received by the Committee and for duly gathering them and forwarding them to the Committee for our review.

We also wish to thank those persons who appeared before the Committee at our request to assist us with the understanding of details of specific issues related to the legislation.

Lastly, and perhaps most importantly, we wish to thank the citizens of the Province of Alberta who took the time and made the effort to present to us their written

thoughts and expressions of concern over the present legislation. Some of the written material was extremely comprehensive representing many, many hours of thought and effort on the part of the author. We also wish to thank those citizens who took the time to appear personally before the Committee in the various communities in the Province to express to us their concerns about the operation of the legislation in their communities.

March 30, 1990

Thomas B. MacLachlan, Chairman
Nancy Kotani
William G. R. Partridge
Doug Holmes
Evelyn McLaren

2.2 The Scope and Mandate of the Committee

The Ministerial Advisory Committee on Residential Tenancies was appointed on January 5th, 1989, by the then Minister of Consumer and Corporate Affairs, The Honourable Elaine McCoy, to review the Landlord and Tenant Act, R.S.A 1980, c. L-6 (the Act) and submissions received by Minister requesting changes to it and to provide the Minister with recommendations for change to the Act and related statutes. The Minister's stated goal was to achieve legislative change that:

a) meets the needs of the communities which the Act serves, and,

b) maintains a balance between the interests of landlords and the interests of tenants.

The Committee's original appointment anticipated that the proceedings would be completed and a report presented to the Minister by September 30, 1989. However, the task of comprehensive review and preparation of recommendations involved considerably more time and effort than originally estimated. As a result of those additional time requirements, a final Report was presented to the Minister of Consumer and Corporate Affairs in March of 1990.

2.3 Methodology

The Committee reviewed and discussed existing landlord and tenant legislation in Alberta. Areas of concern naturally received considerably more attention. The Committee examined the landlord and tenant legislation existing in other jurisdictions for assistance in resolving some issues. A list of those jurisdictions whose legislation was reviewed by the Committee is provided in Appendix "C".

The Committee's main source of input was written submissions solicited from the citizens of Alberta. A summary of those written submissions is included in Appendix "A" of the Report.

In addition, the Committee travelled to and spoke directly with citizens of various communities in the Province about their specific landlord and tenant concerns. The Committee's community tour schedule is listed in Appendix "B" of the Report. The Committee found the tour useful in identifying and understanding the specific and unique landlord and tenant concerns that exist in different areas of the Province. The Committee feels that those unique concerns have been addressed in its recommendations.

In order to quantify the extent of the concerns raised in the written submissions, and to accurately identify the characteristics of individuals affected by the legislation, the Committee commissioned a survey of landlords, residential managers and tenants. The survey is attached to the report as Appendix "E", and it is referenced throughout the report. The survey provided useful and provocative information on the characteristics of tenants and landlords in Alberta, and allowed us to better understand the needs of the population affected by the legislation, and suggest recommendations with them in mind.

During the course of the Committee's deliberations, the subject of rent control became a significant issue in the Province. The Committee reviewed academic opinions with respect to rent control. However, we did not exhaustively review all aspects of the rent control issue, but rather focused on the necessary conditions for rent control and the long-term effects of rent control on the rental market place. The Committee also reviewed the practical aspects of rent control as demonstrated in jurisdictions that have rent control legislation. The publications on rent control reviewed by the Committee are listed in Appendix "D" to the Report.

2.4 Structure of the Report

The report discusses the important issues and problems found by the Committee on a topical basis. After defining to what and to whom the Act should apply, the Committee discusses the basic rights and obligations of the landlord and the tenant, together with the remedies of each. The major topics of security of tenure, security deposits and rent control are dealt with in separate sections. The Committee makes a recommendation for a new method of dealing with landlord and tenant problems in the chapter entitled "Dispute Resolution". Finally, the report concludes with the topics of subsidized housing, public education, licensing, resort communities and the general administration of the Act.

The Committee has deliberately refrained from attempting to draft a landlord and tenant statute. Putting the recommendations of the report into a statute will be left to legislative draftsmen. However, some particular wordings are suggested in order to deal with specific issues, and are the result of considerable discussion and reflection.

The issues involved in landlord and tenant relationships are complex and interrelated. Any single recommendation proposed in this report will have to be read in the context of other recommendations and we have attempted to outline the linkages as clearly as possible.

3. THE CURRENT MARKETPLACE

3.1 Tenants

The Committee analyzed the characteristics of tenants by using a combination of existing statistics and the survey results. The chart below outlines census data for Alberta for 1971, 1981, and 1986.[2]

	1971	1981	1986
Total Alberta Population	1,627,875	2,237,725	2,365,825
Median Age Years	24.9	26.9	29.2
Percent Urban	73.6	77.2	79.4
Percent Rural	26.4	22.5	20.8
Percent Divorced	1.3	2.5	3.3
No. of Private Households	464,615	756,240	836,130
No. of Persons in Private Households	1,580,750	2,179,345	2,310,050
Average Number Per Household	3.4	2.9	2.8
Number of Families	380,220	565,635	616,320
Number of Husband and Wife Families	346,130	508,716	543,485
Percentage of Husband and Wife Families	91	90	88
Number of Single Parent Families	34,095	58,920	72,880
Percentage of Single Parent Families	9	10	12
Total Number of Rented Accommodation	167,910	280,025	316,070
Total Number of Owned Accommodation	296,710	476,215	516,090
Percentage of Rented Accommodation	36	37	38
Percentage of Owned Accommodation	64	63	62
Population Living in Apartments	76,280	146,465	143,000*
Percentage Living in Apartments	16	19	17*

*Note: The 1986 census statistics, in this category, only included apartments of 5 stories or more. The figures for 1971 and 1981 included all apartment buildings of whatever size.

Some interesting trends emerge from these figures.

[2] "Alberta Statistical Review, Fourth Quarter, 1988", Alberta Bureau of Statistics, Alberta Treasury, Feb. 1989

AGE

According to Statistics Canada, the median age of the Alberta population is increasing. This is in line with the statistics for Canada as a whole.

The survey of tenants asked for information on tenant age.[3] It showed that 57.6% of tenants were between the ages of 25 and 44; with 80.6% of tenants being under the age of 45, and 23% reporting their ages as between 18 and 24. On the other end of the scale only 7.5% reported their age as 65 or over.[4] The survey reported[5] that for urban tenants the most common type of accommodation is an apartment building with five stories or less, and that this type of accommodation is more likely to be occupied by persons between the ages of 18 and 24 or 65 or over. These represent the youngest and oldest age groups living independently in Alberta.

URBAN/RURAL SPLIT

The urban population increased dramatically between 1971 and 1986, while the rural population decreased by the same magnitude.

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[3] Survey, Appendix 1, page 12

[4] Survey Report, page 29, figure 24 for distribution of tenant population by area and type of accommodation

[5] Survey Report, page 26

INCOME

When asked to report on their total family income, tenants responded as follows:

Income	Percentage
Under $10,000	13.3
$10,000 to $20,000	27.8
$20,000 to $35,000	32.9
$35,000 to $50,000	17.5
$50,000 to $75,000	6.8
Over $75,000	1.7

These income figures suggest a significant percentage of tenants, (41.1%), have an annual gross family income under $20,000.00.[6] This compares to population of Alberta as a whole where the earn household income is approximately $35,600. Families in these social and economic circumstances are disadvantaged in their ability to find adequate, comfortable, affordable, rental accommodation. In addition, they are handicapped in effectively providing for their needs, and in voicing their concerns regarding rental accommodation.

When family income in the survey is correlated to other information requested, we find that those tenants with a family income of under $20,000.00 are more likely than other income groups to:

1. Indicate that their landlord needs to give them less than one month's notice for eviction, demonstrating a clear lack of understanding of their rights under the Act.

2. Have had a problem with their landlord in the last two years.

[6] Survey Report, Appendix 1, page 17

3. Have had a problem in the last two years with no interest being paid on their security deposit.

4. Have complaints about their current landlord.

5. Indicate that landlords can make deductions from security deposits for appliance maintenance and normal wear-and-tear, indicating a misunderstanding of the basic principles of security deposits.[7]

6. Say they will always rent.

The basis of the last finding was the answer to the question: "*How much longer do you expect to continue to be renting?*"[8]

The overall findings were as follows:

Number of Years	Percentage
Less than One Year	14.2
One to Two Years	26.3
Three to Five Years	26.2
Six to Ten Years	7.4
Over Ten Years	4.5
Will Always Rent	21.4

The responses to this question demonstrates a significant number of the Alberta tenant population consider that they will always rent their residential accommodation. Significantly, 30.4% of those reporting income under $20,000.00 reporting that they will always rent their accommodation.

[7] Survey Report, Appendix 1, page 6, question 14

[8] Survey Report, Appendix 1, page 12, question 34

The next highest category reporting they will always rent (17.1%) was those families with income between $20,000 and $35,000.[9]

NUMBERS OF RENTERS

The percentage of the Alberta population that is renting has increased steadily from 1971, while the percentage of the population living in their own owned accommodation has decreased steadily since 1971. According to 1986 census data, 38% of Alberta householders rent their primary residence, second only to Quebec at 45%. The lowest rate of householder rental accommodation in Canada is in Newfoundland at 20%. Alberta's rate of 38% is slightly higher than the national average which is 37%. It appears that, by the close of the 1980's, that the percentage of the Alberta population renting their residential accommodation will be approximately 40%. The proportion of the population renting their residence is higher in Calgary and Edmonton than for Alberta as a whole. For 1986 census data, 43% of Calgarians and 47% of Edmontonians rented their residences.[10]

FAMILY TRENDS

Of the total number of families in Alberta in 1986, 88% were husband and wife families, while 12% were single parent families. The percentage of husband and wife families has decreased steadily since 1971 and the percentage of single parent families has increased steadily since 1971. If those trends continue throughout the next decade, at the turn of the century, Alberta can expect to have, as husband and wife families, approximately 80% of its family population and as single parent families approximately 20%.

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[9] Survey Report, Page 21, Figure 26

[10] Survey Report, page 79

This increase in the single parent families is parallelled with the percentage of the population who report themselves as being divorced, from 1.3% in 1971, to 2.5% in 1981, and to 3.3% in 1986.

The survey[11] reported that 39.4% of tenants responded that they were single, having never been married, 4.2% reported they were separated from their spouse, 10.6% reporting they were divorced and 5.6% widowed. The percentage of tenants in the "single" category was 59.8%. This is substantially higher than the figure for the general Alberta population.

When the respondents were asked for the make-up of their household,[12] 80.1% reported that no one under the age 5 resided with them. 79.9% reported no one between the ages of 6 and 17 normally lived in their household. When asked how many people 18 and over, including the respondent, normally lived in their household, 37.3% reported one and 53.7% reported two.

The response of female respondents to male respondents was 49.2% to 50.8% respectively.

The survey conducted by the Committee concludes that Alberta tenants are more likely to be younger, live alone and have lower incomes than the Alberta population as a whole. The Committee believes that, due to the economic effects of a marriage break-up, single parents are more likely to be renters than homeowners.

[11] Survey Report, Appendix 1, page 13

[12] Survey Report, Appendix 1, page 16

3.2 Landlords

The characteristics of Alberta Landlords were more difficult to assess because no comprehensive list of landlords in Alberta exists. The survey constructed a list using all available information.[13]

The last Alberta Census in 1986 reported that there were approximately 316,000 rental units in the Province of Alberta. The survey conducted by the Committee polled landlords who were responsible for approximately 12% of that stock, or approximately 38,000 units.[14] These 38,000 units represented 702 different rental properties.

Although it was called a survey of "landlords", it actually looked at several distinct sub-groups. Those sub-groups included residential managers, and property managers, as well as owners.[15] For ease of reference the survey combined all the groups and called them "landlords", but the Committee recognizes definite distinctions between each of those groups.

The reference to "resident manager" in the survey is to an individual who is hired by either a fee manager or the owner to live at the complex being managed by them. The typical example of this category would be the resident manager/caretaker.

The category referred to as "owner" would be those persons who, in addition to owning the residential units, participated directly in their management.

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[13] Survey Report, section 2.2.1. "Respondent Selection" pages 6 - 7

[14] Survey Report, Appendix 1, page 35

[15] Survey Report, page 35 for distributions

The category referred to as "property manager" included what the industry commonly refers to as "fee managers" who are hired by the owner to manage a portfolio of residential dwelling units. The fee manager may in addition hire a resident manager who would live within the complex.

The proportion of respondents who were classified as property managers or as owners was approximately equal at 23% each.

Sixteen percent of the respondents operated 5 or more separate residential properties. 85% of respondents reported that their holdings were residential dwellings consisting of more than ten units per dwelling.[16]

These statistics point out that large numbers of rental units which are managed by a relatively few number of landlords and property managers. A few landlords and property managers have a significant impact upon the operations of the residential market in Alberta.

[16] Survey Report, page 56, Figure 49, for distribution of rental units between owners, residential manager, and property managers

4. THE ROLE OF LANDLORD AND TENANT LEGISLATION

In proposing landlord and tenant legislation that meets the needs of contemporary Albertans and serves their needs for at least the next decade, the population statistics in the preceding section are important. The Committee concludes that a large percentage of the tenants during the next decade will be single parent families or families in marginal economic circumstances who consider that they will always be tenants. These families will be more likely to have problems with their landlords, not fully understand their legal rights, or less able to pursue their rights within the constraints of the current system. Of particular concern is the finding that 60.1% of tenant respondents have achieved a Grade 12 High School Graduation or less.[17] In the population of Alberta overall, approximately 46.5% have had 12 years of schooling or less.[18]

The Committee's view is that landlord and tenant legislation regulates the minimum acceptable standards for rental accommodation in Alberta. The individuals who would likely be most affected by those minimum standards would be those with fixed or lower incomes or otherwise inflexible finances such as seniors and single parent families who are less able to afford high quality, expensive accomodation. It is these groups that the Committee had in mind when making recommendations.

The Committee stresses, however, that the proposals in this report reflect minimum standards of conduct. It is expected that, in the normal course, the relationship between landlords and tenant will be much more cooperative and conciliatory than what might be expected after reading this report. While the Committee found most landlords and tenants treated each

[17] Survey Report, Appendix 1, page 13

[18] All Alberta Study, 1989.

other with respect, there are instances of poor behaviour which have serious consequences for the other party concerned. The consequences are complicated when tenants have less ability or inclination to seek remedies for the landlord's breach. It is these instances which the Committee attempts to address in its recommendations, while balancing the interest of the landlords and the interests of the tenants.

5. SCOPE AND APPLICATION OF ACT

5.1 Overview

The Committee has concluded that the definition section of the present Act is deficient in several areas. A enlarged definition section could assist in identifying those circumstances in which the Act will apply. The definitions in the Act are crucial to deciding when and to whom the Act applies. By adding or amending the definitions discussed below, the Committee believes that the rights, obligations and remedies modified in the Act will be much more easily applied

5.2 Scope of Act

ISSUE: The Act now refers to both commercial and residential tenancies, and individual sections of the Act may apply to one or the other or both types of tenancies.

DISCUSSION: Commercial tenancies, such as shopping centre leases or leases of other commercial premises are usually governed by a contract negotiated between the two parties. The application of the Act to commercial tenancies does not help commercial landlords or tenants.

RECOMMENDATION

The Committee recommends that the references to "commercial tenancies" be deleted from the Act entirely and that there be a statement to the effect that the Act applies only to residential tenancies.[14]

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[14] Act, Section 2(2)

5.3 Definitions - "Residential Premises"

ISSUE: The Act only applies to "self-contained dwelling units".

DISCUSSION: The Committee believes that it is appropriate to provide the protection of the Act to those premises which are occupied as residential units but which are not "self-contained". These include premises which are commonly called boarding houses, rooming houses, or lodging houses, as well as shared accommodation in which each of the residents who share the accommodation sign a separate lease with the landlord. The Committee believes that the best approach to achieve this result is to define residential premises as broadly as possible, but exclude specifically those premises which are not appropriately governed by the Act. Exclusions to this definition would be:

(a) ***Premises occupied for business purposes with living accommodation attached and rented under a single Agreement;***

It was the Committee's view that these agreements are essentially a commercial lease and should be governed by the terms and conditions of the negotiated lease agreement. The Committee is of the view that such commercial tenancies do not lend themselves to regulation and administration under residential tenancies legislation

and that the new Act should only apply to residential accommodation.[15]

(b) ***A single room, or series of rooms, that do not comprise a self-contained dwelling unit in a single family dwelling unit occupied by the landlord;***

The exclusion of this arrangement from the definition of residential premises is appropriate because of the personal and private nature of premises owned and occupied by the landlord. It was the Committee's view that the landlord's right to enjoyment of his private home and ultimate control of its occupants was paramount to any protection that might be afforded a tenant under the Act in those circumstances. Moreover, it is the Committee's impression that the number of tenants living in these types of accommodation is minimal. The Committee believes that any restrictions on the landlord's ability to remove someone from his own home would be an undue infringement on the landlord's right to privacy.

(c) ***Accommodation provided to the travelling and vacationing public in a hotel/motel or motor hotel, resort, lodge, tourist camp, cottage or cabin establishment in campground, trailer park, tourist home, bed and breakfast establishment or farm vacation home where the tenant resides in the premises for a period less than six months;***

[15] See 16.3, "Transition Provisions", infra for allowance for small commercial landlord and tenant to arrange their affairs

The exemption of this accommodation recognizes the specific requirements and operational concerns of these facilities. These premises are not the permanent residence of the tenant and, as a result, there is no compelling reason to provide the tenant with protection under the Act. However, the Committee saw a need to recognize that there are, in some hotel settings, long-term residents who do require the protection of the Act. The threshold of six months was felt appropriate to bring these types of long term relationships within the legislation.

(d) ***Accommodation provided by an educational institution to its students where:***

(i) the accommodation is provided primarily to persons under the age of majority; or

(ii) all major questions related to the accommodation are decided after consultation with a Councillor or association representing the students.

The Committee received submissions from several Colleges, Universities and post-secondary institutions in Alberta as well as from the Department of Advanced Education. We concluded that residences and dormitories provided by these educational institutions should, generally, be exempt from the legislation. In all cases reviewed by the Committee, residences and dormitories are operated by the educational institution as an integral part of the curriculum. There is a student representative council and the premises are governed by a comprehensive set of rules and regulations established

by the institution in consultation with the student council. It is the Committee's observation that the administrative procedures that are in place in this type of accommodation contain sufficient checks and balances to ensure that a particular student resident is dealt with fairly. The Committee determined that the operation of residences and dormitories by post-secondary institutions in Alberta is not regulated by the Department of Advanced Education beyond the physical construction of the buildings. Each educational institution is free to make its own rules and regulations for the operation of their residences. The regulations often mirror the provisions of the Act and it is the Committee's view that, so long as the student residents are involved in setting the rules and regulations and administering those programs, there is sufficient protection for the student residents. Without such integral administrative procedures, however, it is the Committee's view that the legislation should apply.

(e) ***Nursing homes and some Senior Citizen's lodges***

The Committee recognizes the particular needs of senior citizens nursing homes that are operated as long-term care facilities for seniors who are not in a position to live independently. Relocation of the senior may become necessary due to health and chronic care concerns and if the Act were to apply to those accommodations it would restrict the ability of the nursing home to appropriately deal with the senior.

We question whether all senior citizen's lodges should be exempt from the legislation. Those types of accommodation, we

understand, are often self-contained and occupied by seniors who live pretty much independently. Any home care or support provided to a senior who resides in such a lodge is provided under direct contract between the senior and the provider of the care and not by the lodge. Lodges can be distinguished from nursing homes since the lodges provide no ongoing care and nursing assistance. It is our recommendation that lodges in which seniors live independently without ongoing supportive care provided by lodge operators should be included in the Act, while lodges that provide ongoing care to the chronically ill should not.

(f) ***Half-way houses for the mentally or physically disabled used primarily as a rehabilitative centre where placement in the facility if controlled by the treatment agency;***

The exemption for half-way houses for mentally disabled is appropriate since those institutions are more of a care facility than a permanent residence and the operators need the flexibility to relocate their clients in accordance with their needs.

(g) ***Correctional institutions:***

Correctional institutions are exempted for obvious reasons.

RECOMMENDATION

The Committee recommends that the definition of "residential premises" be expanded to include "any place occupied by an individual as a residence", subject to the following exceptions:

(a) Premises occupied for business purposes with living accommodation attached and rented under a single agreement;

(b) A single room, or series of rooms that do not comprise a self-contained dwelling unit occupied by the landlord;

(c) Accommodation provided to the travelling and vacationing public in a hotel/motel or motor hotel, resort, lodge, tourist camp, cottage or cabin establishment in campground, trailer park, tourist home, bed and breakfast establishment or farm vacation home where the tenant resides in the premises for a period less than six months;

(d) Accommodation provided by an educational institution to its students where:

  (i) the accommodation is provided primarily to persons under the age of majority; or

  (ii) all major questions related to the accommodation are decided after consultation with a Councillor or association representing the students.

(e) Nursing homes and some Senior Citizen lodges;

(f) Half-way houses for the mentally or physically disabled used primarily as a rehabilitative centre where placement in the facility if controlled by the treatment agency; and,

(g) Correctional institutions.

5.4 Definitions - "Tenant"

ISSUE: The Act does not define "tenant".

DISCUSSION: Often landlords are faced with occupants of residential premises who were not named in the original lease agreement, and in circumstances where the original tenant has long since vacated the premises. The inclusion of the words "authorized occupant" in the definition of "tenant" would encompass a person properly brought onto the premises after the original lease agreement was signed, but who was not named in it. Doubts of landlords about whether an occupant is a "tenant" would be eliminated by this definition. If the person is a tenant, he assumes the rights and the obligations under the Act. If he is not a tenant, the landlord will be able to recover possession from the unauthorized occupant on short notice under the "substantial breach" provisions.[16]

RECOMMENDATION

The Committee recommends that a definition of "tenant" should be added. The suggested definition is:

> *"Tenant" means a person who is party to or executes a tenancy agreement or is listed in the tenancy agreement as an occupant or is approved as a Tenant by the landlord expressly or by implication, and includes a Lessee, authorized*

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[16] See 7.2.1, "Landlord's Remedies", "Unauthorized Tenants"

occupant, authorized subtenant together with the heirs and successors of any of those individuals.

5.5 Definitions - "Landlord"

ISSUE: The Act does not define "landlord".

DISCUSSION: It is the Committee's view that all of the obligations of the landlord contained in the lease agreement should be legally assumed by a new owner of the residential premises. These obligations include those that would normally be considered personal covenants as well as those covenants that follow the land and would be imposed on subsequent owners in any case.

Often a tenant does not deal directly with the actual owner of the premises. If the lease is signed by the tenant with a caretaker or resident manager, it may not be clear who the tenant may look to for the fulfilment of the landlord's obligations. The tenant should be able to enforce the statutory obligations of the landlord through the person signing the document in those circumstances.

RECOMMENDATION

A definition of "landlord" should be added. The suggested definition is:

"Landlord" includes the owner, a person who permits or gives occupation while in ostensible control of residential premises, a Lessor, and any of their heirs, assigns and personal representatives and successors in title.

5.6 Definitions - "Rent"

ISSUE: The Act does not define "rent".

DISCUSSION: The payment of rent by a tenant is considered by the Committee to be a fundamental obligation of any tenancy agreement. Breach of that term by the tenant can lead to a swift eviction. There are a number of different circumstances in which consideration other than money flows from the tenant to the landlord in return for the tenant's occupation of the residential premises. A thorough definition of what "rent" means in this Act is necessary to prevent a misapplication of the remedies and other provisions of the new Act.

RECOMMENDATION

The Committee recommends that a definition of "rent should be added. The suggested definition is:

"Rent" includes consideration, whether in money, services or goods, paid, given or agreed to be paid or given by a tenant to a landlord in respect of residential premises, including consideration for a privilege, benefit, service, facility or other thing provided, directly or indirectly, by a landlord to a tenant that relates to the

use, occupation, or enjoyment of residential premises, but does not include a security deposit or utility charge paid directly by a tenant.

I. RIGHTS AND OBLIGATIONS OF LANDLORD & REMEDIES OF TENANT

6.1 Rights and Obligations of Landlord -- Overview

The Committee is of the view that the landlord's covenants and responsibilities as they are presently described in the Act[17] should be maintained. The recommendations in this section of the report are generally additions to the provisions of the present Act.

The survey conducted by the Committee discloses some interesting results regarding tenant's complaints concerning landlords. The initial perception of the Committee, from the written submissions and presentations made to it, was that one of the largest areas of complaint revolved around deductions from security deposits. The survey, however, suggests[18] that security deposit disputes comprised only 15.4% of tenant complaints, while 60.8% of tenants complained that landlords did not attend to needed repairs and failed to maintain the premises in an appropriate condition. The first part of this section of the report deals with the landlord's obligation to maintain and repair the premises.

6.1.1 Landlord's Duty to Repair, Maintain and Clean

ISSUE: The present Act does not require the landlord to maintain the premises during the term of the tenancy, only that the premises be "habitable" at the beginning of the tenancy.[19]

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[17] Act, Section 14

[18] Survey, Appendix 1, Question 7

[19] Act, Section 8 (14) (a)

DISCUSSION: The following table[20] shows the percentage of the housing stock by the year of construction:

Before 1946 - 9%
1946 to 1960 - 17%
1961 to 1970 - 18%
1971 to 1980 - 40%
1981 to 1986 - 16%

The interesting statistic for purposes of maintenance and repair considerations is the age of the dwellings. 26% of dwellings in Alberta are over 30 years old. As well, a large portion (40%) of Alberta's housing was constructed during this Province's "boom years".

Of those structures for which funding was applied for under the Federal Residential Rehabilitation Assistance Program (R.R.A.P):

1. about 40% of single family dwellings were rated poor to fair and needed some major structural repair;
2. about 60% of apartment dwellings were rated poor to fair and need some major structural repair.

If this standard reflects the norm in Alberta, it would indicate rental property in greater need of repair than residential property that is owner occupied. The Committee has seen some of the housing constructed in the quick, speculative market of the late 70's and early 80's and it already showing signs of disrepair.

[20] These and the other statistics on this page are taken from a report presented at a Conference entitled "Speaking Out: A Provincial Conference on Tenant Issues", on April 28 and 29, 1989 in Edmonton

There may be many reasons for the lack of maintenance of the rental stock leading to the deterioration seen. It may be that maintenance and repair budgets were reduced or eliminated during the economic slow down and rents fell to a level where the landlord did not feel he had sufficient funds to conduct the repairs or maintenance. It may be the result of poor quality workmanship or poor materials during initial construction. The true reason for the deterioration seen may never be known, but whatever the reason, the Committee is of the view that essential repairs and maintenance must be carried out as quickly as possible.

Some of the greatest repair needs are in inner city areas where single family dwellings had been divided into multiple dwellings. Apart from older neighbourhoods and low income neighbourhoods in urban centres, it is generally agreed that housing in many rural areas does not meet minimum standards, and it is far less regulated than urban centres.

Repair and maintenance issues show themselves in many ways. For example:

1. A single mother on welfare, living in an inner city house, says she has been trying to get her landlord to do a number of badly needed repairs for more than a year: the toilet leaks when it is flushed; the house needs to be fumigated because it is infested with bugs; the walls need to be repaired and painted; windows need to be replaced; and the furnace is faulty.

2. A landlord makes a verbal agreement to repair or clean a dwelling before a tenant moves in. The tenant shows up to move in and the work has not been done and is not later done by the landlord.

3. Poor plumbing, electrical wiring and heating, along with pest infestations are common complaints about inner city rental accommodation.

4. Landlords and tenants disagree over what is "normal wear-and-tear".

5. Many single family dwellings in the inner city have been split up into multiple dwellings illegally. This results in: bathrooms that are in furnace rooms; basement suites that have only cement flooring, or no windows; improper ventilation; and attic "suites" which have only 4'x4' to stand up in due to slanting roofs.

6. A tenant is informed that he will not be refunded his security deposit because he is being charged for damage, while the tenant maintains the damage was there when he moved in. No move-in inspection report was completed or signed.

The Committee is aware that the present reference in the Act[21] to "habitable" accommodation is extremely vague. However, the Committee is also aware that it is impractical to include in the Act full and complete standards for rental accommodation that will apply to every community and every rental unit in the Province. The type and acceptable standards of such units are too diverse to allow such universal standards to be functional.

The best solution is to have recourse to provincial housing and property standards and regulations and to whatever bylaws and regulations are enforced in the individual municipalities.

The most effective way to incorporate those provisions is simply to reference the applicable Legislation in the Act.

The Provincial Legislation referred to is as follows:

1. The Public Health Act, R.S.A. 1980, c. P-27; under which are contained the Housing Regulation 241/85 and a Nuisance and General Sanitation Regulation 242/85;
2. Uniform Building Standards Act, R.S.A. 1980, c. U-4;
3. Gas Protection Act, R.S.A. 1980, c. G-2;
4. Electrical Protection Act, R.S.A. 1980, c. T-6;
5. Elevator and Fixed Conveyances Act, R.S.A. 1980, c. T-7;
6. Fire Prevention Act, R.S.A. 1980, c. F-10; and
7. The Alberta Building Code.

However, effective enforcement of the obligations of a landlord to fully maintain and repair premises in accordance with all these

[21] Act, Section 14 (a)

standards will involve a considerable increase in the enforcement and inspection procedures now utilized by the province and the municipalities with respect to the present building and housing standards.

Municipal Governments have the ability under the Municipal Government Act[22] to enact Minimum Property Standard bylaws to:

(a) prescribe maintenance standards and prohibit use of property not conforming to the standards;

(b) require property to be repaired and maintained to comply with the standards or to be cleared and left graded and levelled.

Unfortunately, Municipal Minimum Property Standards bylaws have no strong authority under the Municipal Government Act. The Executive Committee or a council of a municipality can be reluctant to become involved in this issue, since bylaws can become political "hot potatoes" to enforce. The Bylaw Inspectors often have no clout unless they bring in the Building Inspectors, Fire Inspectors, and so on. Furthermore, they cannot come onto property without the authorization of the occupant or a Court Order (which can be ignored with little penalty). It has been suggested that even if a second letter requesting compliance with the bylaws after an inspection was ignored, a municipality would likely never go to Court to enforce compliance. We have been advised that at least one municipality has recommended revisions to the Municipal Government Act to correct the deficiencies with respect to the municipality's ability to enforce Minimum Property

[22] R.S.A. 1980 C. M-26

Standard bylaws, but to date, no action has been taken to rectify this defect. Of course, municipalities that do not have their own individual housing standards bylaws will be even further handicapped in enforcing housing standards. Despite this, the Committee feels that the provisions requiring landlords to maintain and repair the premises during the tenancy must be included in the Act. The Committee believes that such a provision may encourage the development and implementation of appropriate standards throughout the Province and aid in enforcement of existing provisions.

For tenants whose accommodation has deteriorated to an alarming extent, the public health and building code authorities can be summoned by the tenant. However, that form of remedy, in most cases, is not satisfactory and landlords who are unwilling to make the repairs cannot be compelled to do so. The end result is that the premises are condemned by the building or health inspector and the tenant is effectively evicted. Tenants can be reluctant to complain to the health or building authorities for fear that they will either be evicted by their landlord for lodging such complaints or the building or health inspector will condemn the building.

The Committee's view is that residential premises should be repaired and maintained during the term of the tenancy. The issue that remains is, who will be responsible for which repairs and maintenance.

The Committee believes that where those repairs and maintenance relate to the structural integrity of the building, they are inseparably connected with the ownership of the residual interest in the building and, as such, are properly imposed upon the landlord.

Where those repairs and maintenance relate to the tenant's abuse of the building or damage or accelerated deterioration due to lack of ordinary cleanliness, they should be the tenant's responsibility. The ordinary cleanliness of the common areas of the building should be the responsibility of the landlord.

CLEANING AND SANITATION

Cleaning and sanitation was viewed as a separate issue to repair and maintenance.

The Committee considered the effect of incorporating in the Legislation minimum standards of cleaning and sanitation. The Committee saw that as an extremely difficult and unworkable proposal in light of the extreme variation in the standard of rental units in the Province. Not only do rental units vary widely in their physical condition, but the standards of cleanliness of rental units also vary considerably. Cleaning and sanitation, except in extreme cases, is a very subjective assessment and it would be impossible in a great number of circumstances to say that either of the parties were being unreasonable.

We discussed the possibility that the landlord could be required to incorporate in his lease agreement or pre-inspection reports the landlord's standard for cleaning of the common areas of the premises and the expected standard of cleanliness of the leased premises.

The Committee felt that this also was an unworkable proposal since it would directly promote conflict between landlords and tenants who were not in agreement on the subjective element of how clean is clean.

The Committee saw as a workable solution for the issues of repair, maintenance and cleaning to include in the Act an obligation on the landlord to maintain the premises fit for habitation and to comply with standards of health and safety throughout the tenancy. This additional covenant would, in the Committee's view, solve some of the major concerns of tenants regarding repair, maintenance and cleaning of the premises.

RECOMMENDATION

The Committee recommends that landlords should be required to maintain their premises throughout the term of the tenancy. The suggested wording for an additional landlord's covenant[23] is:

> *"The landlord shall keep the premises (including common areas) in a reasonable state of repair and fit for habitation and shall comply with any statutory enactment or law respecting standards of health, safety or housing."*

6.1.2 Change in the "Package"

ISSUE: The landlord is able to change or reduce amenities or collateral services rented with a suite during the term of the tenancy without notice to the tenant.

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[23] Act, Section 14

DISCUSSION:

AMENITIES

The following types of additional amenities are often included in rental agreements:

1. Washer and dryer, free or coin operated;
2. Free open parking versus covered electrified or underground parking;
3. Dishwasher;
4. Yard and lawn;
5. Sauna, health club, swimming pool;
6. Security entry system;
7. Cable television.

The Committee proposes that an additional clause be added to the Act[21] preventing the landlord from removing any amenities that existed at the beginning of the tenancy without the same notice to the tenant as required for rental increases. The Committee believes that the landlord should be required to list all collateral services in the lease agreement, and a three month notice should be required to be given to the tenant prior to the reduction or elimination any or all of the collateral services.

REFURBISHING

The Committee also heard submissions that tenants have experienced a decline in the real value of their rental unit to them as a result of the landlord neglecting maintenance and repair during the term of the tenancy. This lack of maintenance and repair may

[21] Act, Section 14

not necessarily relate to the physical structure of the building, but may include regular painting, carpet replacement and upgrading as required considering the age of the premises. If this deterioration is allowed to continue past the time where refurbishing is normally required, the tenant will pay rent for a unit that has substantially reduced in value from its value at the time it was originally rented by that tenant. This is in effect a rental increase. The Committee believes that the landlord should be required to maintain the standards, and the physical make-up of the suite, as those factors existed at the beginning of the tenancy. These standards should not be altered or changed during the term of the tenancy except as affected by normal wear-and-tear.

RECOMMENDATION

The Committee recommends that[28]:

(1) The landlord should be required to list in the lease agreement all the amenities rented with the suite.

(2) The landlord should have to give notice of a reduction in collateral services or amenities equivalent to that required for a rental increase (three months).

(3) The landlord should be required, through refurbishing, to maintain the standards and physical make-up of the suite as those factors existed at the beginning of the tenancy.

[28] Act, Section 14

6.1.3 Landlord's Right of Entry

ISSUE: The present Act permits the landlord to enter occupied residential premises if notice is given. The Committee believes that this provision should be amended to ensure privacy of the tenant.

DISCUSSION: The current Act[26] outlines the landlord's right of entry to residential premises. The Committee has learned that the following problems are experienced with the current provisions:

(a) Landlords ignore the provisions altogether and enter at will, without notice.

(b) Landlords provide notice but the notice simply states that the landlord will be entering the premises to view the state of repair on the dates listed in the notice. The dates listed in the notice may cover the entire term of the tenancy agreement. This form of notice, while in compliance with the letter of the Act, is not, in our view, in compliance with the spirit of the Act.

As background for the recommendations which the Committee will make in this topic, it will be useful to review the common law position of the tenant and privacy. The term "quiet enjoyment" relates to two aspects of residential property. Firstly, it refers to any defects

[26] Act, Section 17

in the landlord's title to that property. Secondly, it refers to any direct interference by the landlord in the tenant's use and enjoyment of the premises.

The tenant's right to quiet enjoyment will be interfered with if the landlord's defective ownership of the property results in a third party claiming a right or priority over the tenant's lease. With the system of land titles that exists in Alberta, these problems will rarely arise.

The tenant's quiet enjoyment will also be interfered with if the landlord directly infringes on the tenant's rights. At common law, the landlord's activities had to be actual physical interference with the tenant's use or enjoyment of the premises. Other interference by the landlord, not amounting to actual physical interference, left the tenant only with a claim for damages and not a remedy under the lease agreement.

At common law, the landlord has no right to enter the tenant's premises without the tenant's consent, subject to the terms of the lease agreement. Further, the landlord has no obligation to maintain the premises or to make repairs during the term of the lease, but if, in the lease agreement, the landlord agrees to make such repairs, he will have an implied license to enter the premises for a reasonable time to make the repairs.[27]

Since we are recommending that the landlord have a statutory obligation to repair and maintain the premises during the tenancy, we believe that the landlord should have the statutory ability to enter the

[27] ILLR Report - Residential Tenancies project, Background paper No. 2, Nov. 1975

premises to make those repairs, subject to appropriate notice provisions. It is our view that the tenant should have at least the common law rights of exclusive possession of the premises during the term of the tenancy and that the landlord should not have access to the residential premises except in certain well defined circumstances. A modification of the Act is required in order to accomplish this.

EMERGENCIES/ABANDONMENT

The landlord is entitled[28] to enter the premises if he believes that the tenant has abandoned them or an emergency requires it. The Committee is of the view that the landlord should not only have a reasonable belief that his entry as specified is required but that the reasonable belief should be based on reasonable grounds. The reasonable belief of the landlord could then be tested, in any circumstance, to ensure that entry would only occur in those circumstances in which a reasonable man would conclude that entry is required.

NOTICE PERIODS

(a) The Committee believes that the tenant is entitled to more than 24 hours notice of the entry in some circumstances. That the present 24 hour notice period should remain for entry for

[28] Act, Section 17 (2)

purposes of showing the premises to prospective purchasers[29] and during the last month of a tenancy[30].

(b) The notice period if the landlord intends to enter to make normal repairs or decoration should be seven days. This seven day notice period would not be applicable if the landlord can bring himself within the emergency provision. It is felt that the seven day notice period is appropriate for normal repairs and decoration since such activity will, by its nature, disturb the tenant's use and enjoyment of the premises. The tenant, with a seven day notice period, would then have a opportunity to arrange his schedule so as to limit the impact of those repairs upon his enjoyment of the premises.

It is felt that the seven day notice period would not adversely affect the landlords. Landlords who wish to make normal repairs or redecorating in the premises would, in most cases, require some lead time to arrange for tradesmen and other construction specialists to affect the repairs or decoration and, therefore, would not be unduly hampered by the presence of this notice provision.

[29] Act, Section 17 (3) (c)

[30] Act, Section 17 (3) (d)

SUNDAYS AND HOLIDAYS

An additional section should be added to the Act[31] that would provide that, except in emergency or abandonment situations, the landlord shall not be entitled to enter the premises on a Sunday or a holiday. This provision would enhance the tenant's rights to privacy. Further, it is recognized that the tenant will likely make more use of the residential premises for a longer period of time on a Sunday or a holiday and the landlord'd entry on these days causes a greater inference with the tenant's use and enjoyment of the premises.

TIME OF ENTRY

A limitation should be added to the Act[32] specifying that the landlord's entry to the premises, except in emergency or abandonment situations must be between the hours of 8:00 a.m. and 8:00 p.m. It is felt that this is required to enhance the rights of the tenant to private enjoyment of the premises.

SERVICE OF NOTICE

When a landlord wishes to enter on notice, the Act[33] should be modified to require that, in addition to the notice being served on the tenant at least 24 hours before the time of entry, it should also be served on the tenants no more than 30 days prior to the entry. This addition would eliminate the landlord's use of "blanket notices" which

[31] Act, Section 17

[32] Act, Section 17

[33] Act, Section 17 (4)

cover the entire tenancy term and which in our opinion, substantially interferes with the rights of the tenant to the private use and enjoyment of the premises.

REASON FOR ENTRY

Where a notice is required by the Act[34] the landlord should be required to state the reason for the entry on that notice.

LAST MONTH OF TENANCY

It is proposed that the above changes be subject to a modification during the last month of the tenancy agreement. More latitude is required for landlord entry during the last month of the tenancy to allow the landlord to show the suite to new prospective tenants. It is proposed that during this last month, landlord entry be still restricted to the hours between 8:00 a.m. and 8:00 p.m., but the landlord would be allowed to enter on Sundays and holidays during the last month for showing the suite to prospective tenants. It is proposed that where the landlord enters the suite, while the tenant is away from the premises, the landlord must leave an advice to the tenant stating that such entry was made.

RECOMMENDATION

The Committee recommends that:

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[34] Act, Section 17 (4)

1. The landlord must have a "reasonable belief based on reasonable grounds" in order to enter the suite as a result of an emergency or in an abandonment situation.
2. The landlord should be required to give at least 24 hours notice, but not more than 30 days notice of any entry.
3. Where the entry is for the purpose of carrying out normal repairs or decoration, the landlord should give at least 7 days notice.
4. Entry should be restricted to the hours between 8:00 a.m. and 8:00 p.m. and prohibited on Sundays or Holidays.
5. During the last month of the tenancy, entry should be permitted on Sundays and Holidays.
6. The landlord should be required to state a reason for the entry in the notice.

6.1.4 Disclosure of Landlord

ISSUE: The identity of the landlord does not have to be disclosed to the tenant under the present Act.

DISCUSSION: Tenants frequently complained to the Committee that the exercise of their rights under the legislation is hampered by an inability to determine the actual owner of their premises. A substantial number of premises in the Province are managed through third party fee management firms and, as a result, the tenant has absolutely no contact with the actual owner of the building. In order for a tenant to be in a position to properly exercise their rights and

remedies under the legislation for a landlord's breach of his covenants, a tenant must be in a position to readily determine the actual owner of the building, or at the very least someone against whom he may exercise his legal remedies under the Act.

It is proposed that an additional landlord covenant[35] be included in the legislation that the full legal name and an address for service of the owner of the building be posted and maintained at all times in a conspicuous place on the premises. However, where the owner or manager feels that posting such a notice is not appropriate, there should be the option of serving each tenant with notice in writing of such information at the start of the tenancy. If the building is managed by a fee manager, the notice may contain the name and address of the fee manager only and a contact person. The address named fee manager shall be deemed to be the address for service of the landlord for all documents required to be served under the Act. The fee manager may also be named as the owner's agent in any dispute resolution procedure.

RECOMMENDATION

The Committee recommends that the name of the landlord and an address for service should be posted in the premises or served on the tenant at the beginning of the tenancy. Alternatively, the fee manager may be identified to the tenant and the fee manager's address shall be deemed to be the address for service of the landlord.

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[35] Act, Section 14

6.2 Remedies of Tenant -- Overview

One of the Committee's immediate recommendations on reviewing the legislation is to divide the remedies section[36] into two sub-parts, each part dealing separately with landlord's remedies and tenant's remedies. This would make the Legislation easier to follow.

In analyzing the existing tenant's remedies and the extent of their application, the following were considered to be a list of breaches by a landlord for which a remedy is required:

(a) breach of security of tenure, arbitrary evictions;

(b) failure to maintain and repair;

(c) breach of cleaning and sanitary standards; (relating to the common areas)

(d) failure to provide clean, habitable premises on the date of possession;

(e) failure to provide vacant possession on the date of possession;

(f) failure to provide the tenant with peaceful enjoyment of the property or interference with the tenant's enjoyment of the premises;

[36] Sections 29 through to and including section 36 outline remedies for both tenants and landlords available in the current Act.

(g) failure to provide the tenant with a copy of the lease or a copy of the pre-occupancy inspection report;

(h) breach of security deposit provisions;

(i) arbitrary changes in the packages of amenities provided to the tenant;

(j) unsafe conditions in the premises and common areas;

(k) rent increases with dominant purpose of eviction;

(l) improper or insufficient notice for any number of things under the Act;

(m) failing to deal with unruly tenants who disturb other tenants in the building.

The current remedies provided in the Act will give the tenant redress for the items discussed above. It is not the Committee's intent to remove the existing remedies, but rather to add to and clarify them as a result of the recommendations contained in this report.

Changes to the tenant remedies section will be required as a result of the following:

(1) In the event the Committee's recommendation regarding dispute resolution is accepted, the establishment of such a Commission would result in the deletion of all references in the remedies sections to the "Court" and replacement with reference to the Commission.

(2) An additional change in these provisions would be necessary to incorporate the suggestions of the Committee to deal with a landlord's breach of obligations for maintenance and repair as discussed.

(3) The requirement to provide a copy of the pre-occupancy inspection report [item (g)] is discussed elsewhere[37] in this report. The remedy for failure to provide that copy is discussed at that point.

(4) An additional modification needs to be made to the Act[38] to permit the termination of the lease by the tenant in the event of a substantial breach by the landlord. It is the Committee's proposal to incorporate a provision similar to the termination remedy available to the landlord for "substantial breach" but accessible by the tenant.

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[37] 9.8 Pre/Post Occupancy Inspection Reports

[38] Act, Section 29 (d)

(5) Item (a) (improper evictions), and item (k) (rent increases for purpose of eviction) and the remedies for them are discussed under "security of tenure".

6.2.1 Repair and Maintenance Disputes

ISSUE: There must be a reasonable method for a landlord and a tenant to resolve repair and maintenance disputes if the landlord is given the obligation to repair and maintain.

DISCUSSION: The Committee's recommendation[»], to place responsibility on the landlord to repair and maintain the premises throughout the tenancy, means that the tenant must have additional remedies in order to deal with breaches of this provision.

ENFORCING REPAIRS AND MAINTENANCE

For repair and maintenance issues, the Committee saw the following as a reasonable method of dealing with disputes:

1. The tenant gives the landlord notice, in writing, of the items for which repair and maintenance are required.

2. Either the landlord does the repairs, in which case the matter is at an end, or after an appropriate waiting period, the tenant files a complaint with the Commission.

» See 6.1.1 "Landlord's Duty to Repair, Maintain and Clean"

3. The Commission will then serve the landlord with notice of the complaint and investigate the legitimacy of the complaint.

4. If the tenant's complaint is justified, the landlord will be notified by the Commission to repair within a set time, failing which the tenant can have the repairs done and set off of cost of the repairs against the rent.

As an alternative to the above procedure or in addition, the Committee believes that the tenant should be able to serve the landlord with a notice of termination equivalent to the notice that the landlord can serve on a tenant for substantial breach. The notice period would be ten days. This notice would be served by the tenant in circumstances where the landlord is in breach of his obligations for repair and maintenance of a substantial nature. The landlord would have the same ability to object to the notice of termination as a tenant would have and take the matter to a hearing. If the landlord does not object, then the tenancy would terminate in accordance with the notice and the tenant would be relieved of his obligation to pay rent but would, of course, be required to return possession of the premises to the landlord.

COLLATERAL SERVICES

The Committee was strongly of the view that any reduction in collateral services is, in fact, a rent increase and should be dealt with in the same manner as a rental increase*.

As a remedy, the Committee believes that the tenant should be allowed to apply to the Commission for an abatement of the rent in a magnitude necessary to recognize the value of the collateral service that has been removed.

RECOMMENDATION

The Committee recommends that:

1. In a dispute about maintenance and repair issues the tenant should be able to access the Commission who will decide the legitimacy of the tenant's complaint and either order the landlord to make the repairs or allow the tenant to perform the repairs and deduct the cost from rent owing to the landlord.
2. Where collateral services have been reduced without notice, the tenant should be able to apply to the Commission for an abatement of rent.

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* See discussion 6.1.2 Change in the "Package"

6.2.2 Peaceful Possession

ISSUE: Tenants have no recourse if their possession is being disturbed by other tenants and if the landlord takes no steps to correct the problem.

DISCUSSION:

VACANT POSSESSION

In the event the landlord does not give the tenant vacant possession at the beginning of the tenancy, the remedies currently contained in the Act[41] are adequate.

PEACEFUL POSSESSION

It is the Committee's view that the landlord's covenant to not "disturb the tenant's possession or peaceful enjoyment of the premises"[42] embodies considerably more than the traditional common law approach to "quiet enjoyment". A residential tenancy is more than simply a demise of land. It is the provision by the landlord to a tenant of premises to be enjoyed and used for residential purposes, and the Act[43] must extend to all legitimate and lawful uses by the tenant of the premises as a residence. As a consequence, a tenant must have a remedy against the landlord who substantially interferes with the tenant's use of the premises as such. The recommendations

[41] Act, Section 30

[42] Act, Section 14 (b)

[43] Act, Section 14 (b)

already made in this report[44] do give the tenant some protection from the landlord's unauthorized entry and harassing behaviour. The tenant can also always terminate the tenancy and leave the premises.

Landlords too have concerns about the behaviour of tenants that would cause substantial interference with the use and enjoyment of the premises by other tenants. To determine how far the landlord should go in regulating the conduct of tenants in the building for the benefit of other tenants is a difficult issue. Should the landlord let the tenants work the matter out between themselves or should the landlord have a positive obligation with substantial powers to effect a resolution of the disputes? Generally, it was thought that to require the landlord to enforce everyone's peaceful enjoyment would place landlords in a difficult position. Presently, the tenant does not have a remedy when a landlord refuses to take action against another tenant who is disturbing the privacy or quiet enjoyment of others.

The Committee stops short of recommending a provision that allows a tenant to step into the shoes of a landlord and evict a problem tenant in the complex. It was suggested that perhaps a procedure might be incorporated allowing a tenant to apply for termination of the tenancies of problem tenants for the protection of others. The Committee proposes that the tenant's (existing) right to obtain damages and rent abatement can be utilized to partly compensate a tenant in such circumstances.

[44] See 6.1.3 "Landlord's Rights of Entry"

RECOMMENDATION

The Committee recommends that the current remedies for the failure of the landlord to provide vacant possession or peaceful possession should be maintained.

7. RIGHTS AND OBLIGATIONS OF TENANT & REMEDIES OF LANDLORD

7.1 Rights and Obligations of Tenant -- Overview

The Committee believes that very few changes to the present provisions in the Act containing the major tenant covenants[45] are necessary. The rights and obligations discussed here will be in addition to the existing rights and obligations of the tenant in the current Act.

7.1.1 Use of Premises

ISSUE: Tenants sometimes want to use the rented premises for business purposes.

DISCUSSION: Tenants should have similar rights to owners in respect of their residence. Owners are able to carry on business in their homes subject to appropriate municipal controls and licensing. If a business could ordinarily be carried on in the residential premises, a tenant should be able to do so as well. This is subject to the right of the landlord to reasonably control the premises. If the business is not illegal, and if it does not inconvenience other tenants, the tenants should be able to carry on that activity in the rented premises.

[45] Act, Section 16

RECOMMENDATION

The Committee recommends that the Act[46] be amended to include the following tenant covenant:

> "The premises should not be used for any purpose in addition to use as residential premises, except with the consent of the landlord; such consent not to be unreasonably withheld subject to all applicable municipal zoning and land use bylaws and regulations."

7.1.2 Tenant's Right to Organize

ISSUE: There is no statement in the present Act concerning the tenant's right to organize or requiring that the landlord deal fairly with such an organization.

DISCUSSION: The Committee was presented with numerous complaints that, when tenants attempt to exercise their rights under the legislation or to complain about the actions of their landlords, they often received eviction notices in return. In some circumstances these types of evictions were used so indiscriminately that tenants, who were merely sympathetic (in the landlord's mind) with the tenants who lodged complaints, received eviction notices.

[46] Act, Section 16

It is the Committee's observation from speaking with groups throughout the Province that if tenants have an opportunity for a full and frank discussion of their problems and concerns with the landlord, a large percentage of disputes can be resolved. Tenants often have concerns which are shared by other tenants in their complex related to the conditions of their suite or the activities of their landlord or other tenants. In addition, tenants have collective concerns about the condition of the common areas of the complex such as shared entrance ways, hallways and playground facilities. An opportunity for tenants to discuss these concerns among themselves and to deal collectively with their landlord is important.

RECOMMENDATION

The Committee recommends that:

1) the formation and activities of tenant associations should be explicitly recognized and approved in the legislation;
2) landlords should be prohibited from evicting a tenant if one of the reasons for such eviction is the tenant's involvement in the tenant association;[47]
3) landlords should be required to recognize, meet with and discuss tenant issues, in good faith with such tenant associations.

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[47] See also 8.3.6 "Retaliatory Evictions", 8.3.4 "Tenant's Remedy for Improper Evictions"

7.1.3 Tenants Duty to Maintain and Clean

ISSUE: The present Act does not clearly state what the responsibilities of the tenant are in respect of cleaning and maintaining the premises.

DISCUSSION: The problem of defining what the tenant's duty is in relation to cleaning is illustrated by the disputes that arise over defining "normal wear and tear" in the security deposit context.[48] The Committee believes that by outlining the tenant's duty to maintain and clean, these disputes could be reduced.

Although, during the term of the lease, the landlord gives up exclusive possession of the property to the tenant in return for rent, the landlord expects the tenant to return the property at the end of the lease. It should also be expected that the tenant's use of the property during the term of the lease will inevitably, through the operation of natural forces associated with the day-to-day activities of life, result in a gradual deterioration of the rental unit. Different features of the rental unit will deteriorate at different rates depending on the treatment by the tenant of the particular item in question. Carpeting, for example, has a certain "life expectancy" depending on its original quality and how it is maintained. If the condition of the premises is to be maintained in the same general category as when the premises was first rented[49], the carpet will eventually have to be

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[48] Act, Section 39(4)

[49] Refer to 6.1.1 "Landlord's Duty to Repair, Maintain and Clean", 6.1.2 "Change in the "Package""

replaced. Likewise, paint and wall coverings require renewal at certain intervals. Appliances, if supplied with the unit, together with kitchen and bathroom fixtures, also deteriorate with normal use and require renewal.

The Committee is of the view that the landlord is entitled to the return of the premises from the tenant in the same condition as when they were leased, subject to the operation of natural forces on the premises through ordinary living.

This will mean that those tenants who are exceptionally hard on premises, causing deterioration of the premises at a rate higher than would ordinarily be expected by a reasonable person, should be accountable to the landlord for that additional deterioration.

The Committee concluded that it is impossible to prepare an exhaustive list of what would or would not be considered "an ordinary rate of deterioration" or "normal wear and tear". However, the Committee felt that additional guidance is required for landlords and tenants to ensure that the tenant's obligation in this area is clearly understood.

RECOMMENDATION

The Committee recommends that:

1. "Normal wear and tear" should not include the removal of stains, dirt and debris accumulated by the tenant through the tenant's style of living.

2. This would be further accomplished by a change in the wording of the tenants' covenants[50] as follows:

"The tenant shall be responsible for ordinary cleanliness and maintenance reasonably required under the circumstances and for damage caused by wilful or negligent conduct of the tenant or the tenant's invitees."

7.1.4 Subletting -- Unauthorized Occupants

ISSUE: The present Act does not provide clear rights or remedies in circumstances where the residential premises become occupied by an individual or group of individuals other than those who originally rented the premises.

DISCUSSION: One of the landlord's complaints is that they can find a unit occupied by persons to whom they did not rent the unit. The original tenant is now gone. The present Act does not help a landlord determine whether these "occupants" have the same rights as the original tenant or whether they can be treated as trespassers.

Landlords should have the ability to control the initial occupancy of a unit. This selection process allows them to make a decision as to who their tenant will be. A landlord who values the ability to select, will want a "good" tenant who will treat the unit with care and keep it free from damage.

[50] Act, Section 16(f)

We are sympathetic to the landlord's concerns in this area. Such circumstances which raises this issue will have a different set of facts, but the recommendation made previosuly adding a definition of "tenant" to the Act will help to resolve these issues. The landlord should have a special notice period for eviction of unauthorized tenants and make a recommendation for this in the next section.

RECOMMENDATION

The Committee recommends that the proposed definition of "tenant" be used to prohibit an existing tenant from subletting the premises to unauthorized persons.

7.2 Landlord's Remedies -- Overview

It is the Committee's view that the present Act[51] provides adequate remedies to the landlord for most breaches of the tenants covenants.[52] However, additional remedies are required in order to deal with some of the obligations of the tenant that have been added in this Report.

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[51] Act, Section 20

[52] As contained in the Act, Section 16, and as expanded in this Report

7.2.1 Unauthorized Tenants

ISSUE: The proposed covenant relating to unauthorized tenants[53] requires a remedy for the landlord.

DISCUSSION: In the event the tenant was to allow unauthorized occupants on the premises, the landlord should be in a position to terminate the tenancy on notice. This is the most effective remedy that the landlord can be given.

In the event that the residential premises are no longer occupied by the authorized tenant under the original lease agreement[54] but by persons who are strangers to the landlord, the landlord should have a short notice period for eviction available to him. The Committee suggests a notice period in those circumstances of 24 hours. If a person wants to ensure his security of tenure, he should confirm his status as a "tenant" with the landlord after the original tenant leaves or abandons the property.

Where a tenant remains in occupation of the premises but adds to those who are occupying persons who are not authorized by the landlord, the landlord should be able to serve notice to terminate the tenancy if he determines on reasonable grounds that the additional persons on the premises are not temporary. The Committee proposes that one month's notice be served on the tenant under such circumstances.

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[53] See above 7.2.1 "Unauthorized Tenants"

[54] With "tenant" as defined in this report

The tenant should be able to object to the notice within that one month only if he is able to prove that the occupants were temporary visitors.

RECOMMENDATION

The Committee recommends that the landlord should have an eviction remedy if there are unauthorized tenants on the premises.

1) If the original tenant or authorized tenant has abandoned the premises, those remaining on the premises should be subject to a 24 hour eviction notice.

2) If the original tenant or authorized tenant is still occupying the premises the notice period should be one month.

7.2.2 Recovery of Rent

ISSUE: The tenant's obligation to pay rent should be enforceable by the landlord, by means other than a termination of the tenancy.

DISCUSSION: Since rent is the primary obligation of the tenant, the primary remedy of the landlord should be the collection of rent due and unpaid.

It is the Committee's view that, not only should a Residential Lease be considered a demise of land in the traditional sense, but it should be considered a contractual obligation as well. As a contractual obligation, the landlord may forego his rights to terminate

the tenancy when rent is in arrears and take action against the tenant to recover the arrears of rent. The Act now provides[55] a simple statement that the landlord is entitled to "recovery of arrears of rent". This should include both resort to legal judgements and seizure of the tenant's goods in the premises.

RECOMMENDATION

The Committee recommends that the landlord should be entitled to sue or distrain to recover rent without terminating the tenancy.

7.2.3 Seizure

ISSUE: The present Act does not clearly state whether seizure is available to a landlord as a remedy if the tenancy has not been terminated.

DISCUSSION: Under circumstances where rent is in arrears and there is a subsisting lease agreement, a landlord also has the right to seize goods by the tenant and to subsequently sell them by judicial sale in order to recover rent arrears from the tenant.

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[55] Act, Section 20

The Committee heard submissions that the Act should contain an explicit statement that the landlord can seize and eventually sell the tenant's goods under the Seizures Act[56] to recover arrears of rent.

All landlords and tenants in the Province are expected to be familiar with the Act and to use it as a guide for their actions. Those trained in statutory interpretation might be aware that not all available legal remedies would be included in the Act and would know how to refer to the Seizures Act. Landlords and tenants not trained in those matters cannot be expected to operate with that level of sophistication. The Committee believes that it would be of great assistance to those who are expected to use the Act on a regular basis for the Act to contain references to remedies, rights and responsibilities in other legislation.

RECOMMENDATION

The Committee recommends that the Act should codify all aspect of residential tenancy law and refer to relevant rights and responsibilities in other Acts.

7.2.4 Repudiation

ISSUE: The Committee heard submissions that the present provision in the Act regarding repudiation[57] was too complex for landlords and

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[56] R.S.A. 1980, Chapter S-11

[57] Act, Section 21

tenants to understand. It was suggested that the Act should be substantially revised and simplified to reduce or eliminate that difficulty.

DISCUSSION: The provision in question was originally proposed by the Institute of Law Research and Reform (I.L.R.R.) in its report on residential tenancy[58]. In that report, the I.L.R.R. made reference to the Highway Properties' case[59] which decided that a commercial lease was more of a contract than a grant of an estate in land. The I.L.R.R. believed that the Alberta law, at the time, failed to recognize that the contractual aspects of a modern tenancy relationship were at least as important as the property aspects. With that conclusion this Committee agrees. The I.L.R.R.'s recommendation was designed to codify the law that had developed around repudiation of commercial leases, as dealt with by the Supreme Court of Canada in the Highway Properties' case, and make those concepts applicable to residential tenancies.

While the present Act may appear overly complicated in its treatment of repudiation, it is the Committee's view that the sections in question cannot serve a useful function in any substantially simplified version. The repudiation of tenancies and the rights and obligations of landlords and tenants which arise in those circumstance is a complex area of law. Those complexities cannot be adequately addressed without the Act in its present form.

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[58] I.L.R.R. Report No. 29, 1978

[59] Highway Properties v. Kelly Douglas, 1971 SCR 562, [1972] 2 WWR 28 S.C.C.

RECOMMENDATION

The Committee recommends that the provisions relating to repudiation[60] and the provisions[61] relating to acceptance of payments from overholding tenants be retained in their present form.

7.2.5 Substantial Breach

ISSUE: The concept of "substantial breach" and the landlord's remedies for the tenant's substantial breach require clarification.

DISCUSSION: Substantial breach is presently defined in the Act[62] as either:

1. a breach of a tenant's covenant[63]; or,
2. a series of breaches of a residential tenancy agreement, the cumulative effect of which is substantial.

The Committee was of the view that the landlord is entitled to a mechanism to terminate a tenancy for substantial breach. The key question here is how to balance the idea of security of tenure[64]

[60] Act, Section 21

[61] Act, Section 22

[62] Act, Section 1(h)

[63] As defined in Act, Section 16

[64] See 8 "Terminating the Tenancy - Security of Tenure"

against the ability of a landlord to a make a reasonable return from the rental property. If the landlord has a reason to evict, the process should be expeditious. The tenant should not be able to compound the problems involved in the eviction by continuing to stay in the premises, free of rent without justification. The nonpayment of rent by a tenant for example, is a breach of such a fundamental obligation of the tenancy that it might be considered equivalent to a repudiation of the tenancy by the tenant. If it was a repudiation, the landlord is either entitled to affirm the tenancy and sue for the rent or accept the repudiation and demand immediate possession of the premises.[65]

It was proposed that, since the Act provides good protection (through security of tenure) to a tenant who complies fully with his covenants and obligations under the tenancy agreement, the Act should also provide for a firmer and more expeditious remedy to a landlord when a tenant is in substantial breach of those covenants.

The Committee's experience with the submissions, both written and oral, is that landlords and tenants do not have difficulty with the application of the first arm of the substantial breach definition, but there is considerable difficulty in applying the second arm of the definition.

The complaint of landlords with respect to the operation of the first arm of this provision is the time within which the remedy can be effected. In cases of non-payment of rent or where the tenant is causing substantial damage to the premises, landlords claim the

[65] See 7.2.4 "Repudiation", above, and Section 21 of the Act

present 14 day notice period is too long. The Committee is in agreement with this assessment.

Under the present mechanisms, if a tenant who has not paid his rent is given 14 day notice, and if all steps in the eviction process are necessary in order to get vacant possession of the premises for the landlord, the premises may not actually become vacant until well into the month following the month in which the rent was not paid. The landlord may potentially lose two (2) months revenue on those premises.

Furthermore, the present Act allows the tenant to pay all arrears of rent and nullify the notice, so the landlord will not know whether the suite will become vacant until the end of the fourteen day period. This causes the landlord difficulty in obtaining a tenant to re-rent the premises at the beginning of the ensuing month due to the short period to find a new tenant. The Committee is of the view that the termination mechanism for substantial breach should allow the landlord to determine, prior to the end of the notice period, whether he will be in a position to let the premises at the end of the notice period.

The Committee is of the view that the reduction in the notice period[“] from 14 days to 10 days and a further reduction of the period in which a tenant has to remedy the breach for the nonpayment of rent to five days will establish a balance between the landlord's and the tenant's interests. It is our firm view that this proposal for a change in the notice periods strikes the most appropriate, fair and

[“] Act, Section 23

equitable balance between the requests of tenants for additional security of tenure and the requests of landlords for a more expeditious solution of the problem of tenants who fail to pay their rent. The Committee specifically canvassed tenants during the hearing phase and found almost universal acceptance of this concept.

Even with the shorter notice period, the tenant is still protected since the landlord will still be required to apply for an order for possession[67]. The tenant may be allowed additional time to vacate the premises in appropriate circumstances.

It is suggested that the landlord, upon serving the tenant with a notice of termination for substantial breach, should be required to serve, with that notice, a completed notice of objection. The tenant would be in a position to sign the notice of objection and file it with the Court (Commission) if the tenant wished to object to the notice of termination.

RECOMMENDATION

The Committee recommends that:

1. present 14 day notice period[68] with respect to the non-payment of rent be reduced to ten (10) days.
2. the tenant be allowed to nullify the notice if the amount of rent that is due and owing is paid in full within five (5) days of receipt of notice.

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[67] See 11 "Dispute Resolution"

[68] Act, Section 23

3. payment of rent after the five (5) days would not nullify the notice and the tenant would be required to give up possession of the premises at the end of the tenth day.

7.2.6 Habitual Late Rent

ISSUE: If a notice of termination may be nullified by payment of rent, the landlord should have a remedy if rent is paid late on more than one occasion.

DISCUSSION: The most common reason for landlords to use the second arm of the definition of substantial breach[69] is where a tenant has demonstrated a consistent pattern of making his rental payment after the date that payment is due.

It would be impossible to delineate in the legislation all scenarios that would fall within the second definition of substantial breach, but it is the Committee's view that some clarification of this aspect of the definition is required. The following discussion should apply not only to late rent, but also any other series of breaches which can, cumulatively, be considered to be substantial.

Where a tenant is consistently making rental payments after the due date, the Committee believes that the landlord should have the option to evict that tenant if he chooses. The obligation of the tenant

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[69] ". . . a series of breaches, the cumulative effect of which is substantial . . . "

is to pay rent and to pay rent when it is due. Tenants who are consistently late in paying their rent may cause the landlord a hardship in meeting his finanical obligations while waiting for the tenant to meet his. Landlords who do not have a clear method to remove such a problem tenant are forced to absorb any additional costs associated with this delay. Since market forces set rental rates, the landlord will likely not be able to recover those costs from the tenant through increases in his rent or in increases in the rent charged to the rest of his tenants.

The Committee is of the view that the request of landlords for a remedy where tenants are habitually late in paying rent is justified. The landlord should be able to apply for termination of the tenancy in those circumstances, but the landlord should still be prevented from applying for termination of the tenancy in circumstances where the failure to pay rent is not habitual and the tenant pays all arrears of rent within the time limit set out in the legislation.[70]

RECOMMENDATION

The Committee recommends that if the tenant has demonstrated his rent will "more likely than not" be paid late, the landlord should be able to apply for an order terminating the tenancy even though the tenant does eventually pay the rental arrears.

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[70] See 7.2.5 "Substantial Breach"

7.2.7 Damage to Premises

ISSUE: How should a landlord deal with tenants who are causing substantial damage to the premises?

DISCUSSION: Almost invariably, landlords were of the view that the present 14 day notice period[71] was too long when dealing with tenants who created major problems either by way of nonpayment of rent or substantial damage to the premises[72]. Tenants who presented briefs to our Committee generally agreed that it was appropriate for the landlord to evict the tenant on short notice for breaches of the tenants covenants.

Landlords are concerned that tenants who cause substantial damage to premises can be very costly to the landlord. When landlords brought these issues to our attention, they told of damages to the premises which were always substantial and that they were not able to recover those losses from the tenant. To complicate the problem, the security deposit was usually not sufficient to cover the damages, the tenant may have left arrears of rent in addition to the damage; and tenants often simply did not having sufficient assets to justify the landlord pursuing a judgment.

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[71] Act, Section 23(2)

[72] See Survey Report, Appendix 7 for comments from landlords, property managers etc. on this topic

It was the Committee's view that landlords should have a very short notice provision to allow for eviction of the tenants in cases of substantial damage.

RECOMMENDATION

The Committee recommends that:

1) where it can be demonstrated that the tenant is causing substantial physical damage to the premises, the landlord should have the ability to evict on 24 hours notice;
2) this notice would have to be in writing and served upon the tenant personally;
3) the tenant would have the right to object to the notice[73] and the landlord could apply for an Order for possession after the objection.[74]

7.2.8 Abandoned Goods and Abandoned Premises

ISSUE: Clarification of the landlord's right in respect of abandoned goods and premises is required

DISCUSSION: Overall, the Act[75] provides an effective means of dealing with abandoned goods in circumstances where the tenant has abandoned

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[73] Act, Section 23(3)(a)

[74] Act, Section 23(4)

[75] Act, Section 24

the premises or left goods upon vacating at the end of the tenancy, but some items do need to be streamlined to help the Act perform more efficiently.

DEFINITION OF "ABANDONED"

Landlords expressed a concern in making a factual determination as to when a tenant has "abandoned the premises". However, since the facts surrounding abandonment differ in each case, the Committee believes that there is no effective way of assisting landlords in making that determination by amending the Legislation. Part of the public education function, which the Committee feels is essential in this Legislation, might involve assisting landlords to identify premises that have been abandoned by tenants.

DOLLAR VALUE OF GOODS

The Committee felt that dollar value mentioned in the Act[76] should be raised to reflect the change in costs since the Act was first introduced. Inflation and the increasing costs of storing such goods make it hard to justify storage of goods with a value of slightly more than $300.00 and still sell those goods at the end of the storage period and realize any net proceeds.

[76] Act, Section 24(2) and Section 24(3)

LENGTH OF STORAGE

The length of storage specified in the Act[77] is too long in the opinion of the Committee. Where a tenant announces his intention, to terminate a tenancy on short notice, the landlord is immediately aware that the premises will become vacant in short order. However, where the tenant moves without notice to the landlord more than a month may elapse before a landlord can determine that the premises have actually been abandoned. The requirement that the landlord store goods left on the premises by the tenant for a further 60 days, in the Committee's view, serves no useful purpose.

APPLICATION OF PROCEEDS

Currently,[78] the landlord may apply the proceeds of the sale of abandoned goods to any judgment obtained by him against the tenant. In order for the landlord to obtain a judgment against a tenant he must serve the tenant with documentation setting out the landlord's claim. If the tenant cannot be served, which will be likely in an abandonment situation the landlord must either obtain a Court Order for substitutional service or dispensing with service. Obtaining either of those Orders is both time consuming and costly. In circumstances where the tenant can be served with such documentation, it is not likely that the landlord will have any difficulty in dealing with the goods left on the premises by the tenant. Therefore, it can be seen

[77] Act, Section 24(4)

[78] Act, Section 24(9)

that the reference to a judgment renders this provision useless to a landlord in most circumstances.

"TAXATION"

The Committee is aware that merely allowing the landlord to apply the money towards the liabilities of the tenant without any accounting, would leave the landlord as the one who decides what the lawful liabilities of the tenant were and could be open to abuse. There must be a check and balance on the landlord's action. It is proposed that the landlord be required to provide proof, to a "taxing officer", of the tenant's liabilities and an accounting of the sale of the goods and application of the proceeds. Although this would not be the equivalent of a judgment, it would provide the tenant with some protection from the arbitrary actions of a landlord by having an independent third party review.[79]

Although the process of taxation might be foreign to some landlords, the Committee believes that the process is simple to access and efficient. In our view, landlords would have no difficulty in adapting to the system.

RECOMMENDATION

The Committee recommends that:

1) the dollar value of goods mentioned in the Act be increased to $1,000.00;

2) the storage period be reduced to 30 days;

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[79] The "Commission" proposed in 11 "Dispute Resolution" could perform these duties as well

3) the landlord be able to apply the sale proceeds against the tenant's "liabilities" to the landlord; and,

4) the landlord be required to justify or prove the "liabilities" of the tenant to a third party through a taxation procedure.

8. TERMINATING THE TENANCY -- SECURITY OF TENURE

8.1 Overview

One of the fundamental needs of mankind is safe, comfortable, affordable accommodation. Without appropriate accommodation and adequate food, the other requirements to survive such as employment cannot be met. Therefore, it is fundamental to the proper functioning of society that housing concerns be adequately addressed.

Residential premises must be considered as more than a business operated by the landlord. The tenant considers the premises "home" while he occupies them. In the majority of cases, tenants take pride in their surroundings and wish to have the security of knowing that, if they comply with the terms and conditions of their lease agreement, their tenancy will continue unabated subject to only exceptional circumstances. This is known as security of tenure.

Presently, tenants in Alberta have very little security of tenure. Their security is limited to the three month notice required by the landlord to terminate the tenancy without cause. The absence of security of tenure has led to an alarming number of prejudicial evictions by landlords[80]. The provision of some form of security of tenure in Alberta landlord and tenant legislation was considered a necessity by the Committee.

[80] See 8.3 "Termination by Landlord -- Overview"

While absolute security of tenure is not a possibility,[81] it is the Committee's view that a beneficial increase in the amount of security for the tenant can be accomplished without unduly interfering with the rights of the landlord to the use of his premises. The Committee received numerous presentations and submissions from landlords and property management firms opposing any increase in security of tenure. They were concerned that any restriction of the ability of the landlord to deal with the premises as he saw fit was an unwarranted and unjustified restriction on the rights of property owners. Landlords saw any change to the existing conditions as threatening. It was the Committee's perception from these presentations and submissions that landlords or property owners misunderstood the concept of security of tenure which was being considered by the Committee. The landlords overlooked the very factor which created the landlord and tenant relationship: the landlord's grant to the tenant of a leasehold interest in the property. That leasehold interest gives the tenant the right to exclusive possession of the premises during the term of the lease with the landlord only retaining a reversionary interest.

The Committee is proposing a security of tenure model that would start from the premise that there would be no eviction of a tenant by a landlord without cause. There would then be exceptions to that basic premise providing for the landlord's right to evict tenants in justifiable circumstances.

[81] Absolute security of tenure would be defined as the inability to remove a person from use and enjoyment of their tenure of land, whether fee simple or a lesser interest. Even for fee simple interests there is no absolute protection, land can be taken by governments and municipalities for non-payment of property taxes, foreclosed for non-payment of mortgage loans, and even expropriated pursuant to legislative authority

The Committee recognizes the competing interests of landlords and tenants with respect to security of tenure. The landlord is the owner of the premises and is entitled to certain rights which follow that ownership. Tenants, not being owners, cannot expect to have absolute security of tenure. In the Committee's view, the present Act provides the tenants with too few rights in respect of security of tenure, and our proposal brings this into balance.

8.2 Periodic Tenancies

ISSUE: The distiction between periodic and fixed term tenancies is not clear in the current Act, particularly when considering the differences between the way different types of tenancies are terminated.

DISCUSSION: There is confusion among landlords and tenants about the definition of periodic tenancies because the Act does not adequately distinguish between "periodic tenancies" and "fixed term tenancies". Tenancy agreements, for a fixed yearly term may or may not contain a holdover or renewal provision. It is the Committee's view that a fixed term tenancy, for whatever period, is not a weekly, monthly or yearly tenancy contemplated by the Act.[82] When landlords and tenants have agreed to a fixed term yearly tenancy, they become confused because the Act refers to a provision to terminate a yearly tenancy. Tenants assume that this section provides a mechanism for them to terminate a fixed term tenancy prior to its termination date. It is the

[82] Act, Section 4

Committee's view that this is not what was intended by the Legislation, and a definition is required to clearly distinguish between periodic tenancies and fixed term tenancies.

RECOMMENDATION

The Committee recommends that the Act contain clear definitions of fixed term and periodic tenancies which contain the following items:

1) the definition of periodic tenancy should clearly provide that it is one which renews itself without notice at regular intervals whether that interval is weekly, monthly or some other period of time.

2) the definition for a fixed term tenancy should state that it is a tenancy entered into for a definite period. The tenancy will come to an end at the end of that fixed term.

3) the fixed term tenancy may provide for renewal of that tenancy either for a further fixed term or for periodic terms following the end of the fixed term.

8.3 Termination by Landlord -- Overview

The Committee received numerous submissions and heard many presentations expressing concern about the landlord's ability to evict a tenant without cause. In many cases, it was the Committee's view that the eviction appeared to be for reasons neither directly related to the effective operation of the residential unit nor any breach of covenant by the tenant. Often, it was as a direct result of the tenant

justifiably pressing the landlord to rectify certain deficiencies in the premises. In other cases, the landlord evicted the tenant as a result of that tenant attempting to organize other tenants in the complex and to deal collectively with the landlord. In one community, tenants making a presentation to the Committee offered to take the Committee members on a tour of their complex, but stated that the tour would have to be conducted by a third party. The tenants were fearful that if their landlord knew they had been to the Committee or had offered a tour of their complex they would immediately receive eviction notices. In others, no specific cause for eviction could be determined from the facts presented to the Committee. Indeed, under the present legislation the landlord is not required to state a cause.

8.3.1 Cause and Notice Periods

ISSUE: What are acceptable reasons for termination of a tenancy by a landlord and how much notice should be given to the tenant of the termination?

DISCUSSION: If we start from the premise that there can be no eviction without cause, we must recognize that that there is a large list of reasons that can be given by a landlord to justify the eviction of a tenant. Those reasons can be categorized into ones that the Committee considers appropriate and ones that the Committee considers inappropriate. The Committee believes that, although the reasons listed below are acceptable reasons for termination, some will require longer notice periods than others.

The model described above contemplates that different notice provisions would apply for each particular cause for eviction.

Acceptable causes for which the landlord may terminate tenancy can be divided into two categories. The first category would be those actions of the tenant which are listed in the substantial breach provisions of the legislation. The notice period for those causes has already been discussed[83]

The second category of causes would be all others discussed in the previous seciton, but not contained in the substantial breach provisions.

Landlords should be able to give notice to quit on a tenant for the following reasons:

(a) *Non-payment of rent;*

(b) *Substantially interfering with the rights of other tenants*[84]*;*

(c) *Illegal activities conducted or performed by the tenant on the premises;*

These activities could endanger the health and safety of other tenants. They may also result in the premises being frequented

[83] See discussion 7.2.5 "Substantial Breach"

[84] See discussion 6.2.2 "Peaceful Posession"

by persons involved in illegal activities and detract from the tenants' use and enjoyment of the premises.

(d) Endangering the health or safety of others on or around the premises;

(e) Unauthorized physical alterations to the premises;

(f) Lack of substantial, ordinary and reasonable cleanliness[85]*;*

(g) Failure to repair damage caused by the tenant's negligence;

This is to protect the landlord's reversionary interest in the building.

(h) The landlord wishing to demolish the residential unit, convert the complex into condominiums, perform substantial renovations on the unit requiring vacant possession or in any other way removing the unit from the rental market;

The Committee considered that a much longer notice period is appropriate in circumstances where the landlord wishes to either demolish the unit, convert it to a use other than residential premises, or perform repairs or renovations so

[85] See discussion 6.1.1 "Tenant's Duty to Maintain and Clean"

extensive as to require a vacant possession of the premises. The Committee feels an appropriate notice period, in such circumstances, would be 120 days.

(i) The sale of the building and the new purchaser is removing the unit from the rental market and requires vacant possession;

(j) The building is being expropriated from the landlord by a lawful expropriating authority and will be removed from the rental market;

(k) The landlord wishes to rent the accommodation personally or to members of his immediate family;

For termination for cause under circumstances where the landlord bona fide and in good faith wishes to occupy the premises himself or by members of his immediate family, the Committee is also of the view that a long notice period is appropriate. However, the notice period should not be as long as that required for demolition, conversion or repairs requiring vacant possession. It is the Committee's view that a notice period in the order of 90 days is appropriate for this use of the premises. This right of the landlord would be coupled with a remedy of the tenant, if the tenant could show that the landlord used this cause for eviction on that particular suite less than one year prior to the current notice, the current notice

would be deemed to be an unlawful eviction and the tenant would be entitled to damages.

Immediate family would be restricted to spouse, child or parent of his or her spouse.

(l) Conversion of the complex into an adults only complex;

(m) Breach of any lawful term of the lease agreement.

The breaches should be subject to eviction under the substantial breach provisions. The question of what effect the contractual obligations in the lease agreement have is clearly illustrated where there is a prohibition against pets. Should a landlord have the right to evict a tenant for the presence of a pet where the lease agreement prohibits pets? Is the owning of a pet a significant breach of the contract to allow the landlord to declare the lease agreement void or should the presence of the pet be considered an item for which only damages are appropriate? The traditional approaches to contractual remedies may not be satisfactory in a landlord and tenant relationship. Damages are not always an adequate remedy to a landlord, particularly against a tenant who has few assets and is essentially "judgement-proof".

In addition, the issue is raised as to whether a landlord should be in a position to specify in a lease agreement that pets are prohibited. The Committee believes that landlords should be able to prohibit pets. If they are prohibited, it would be a

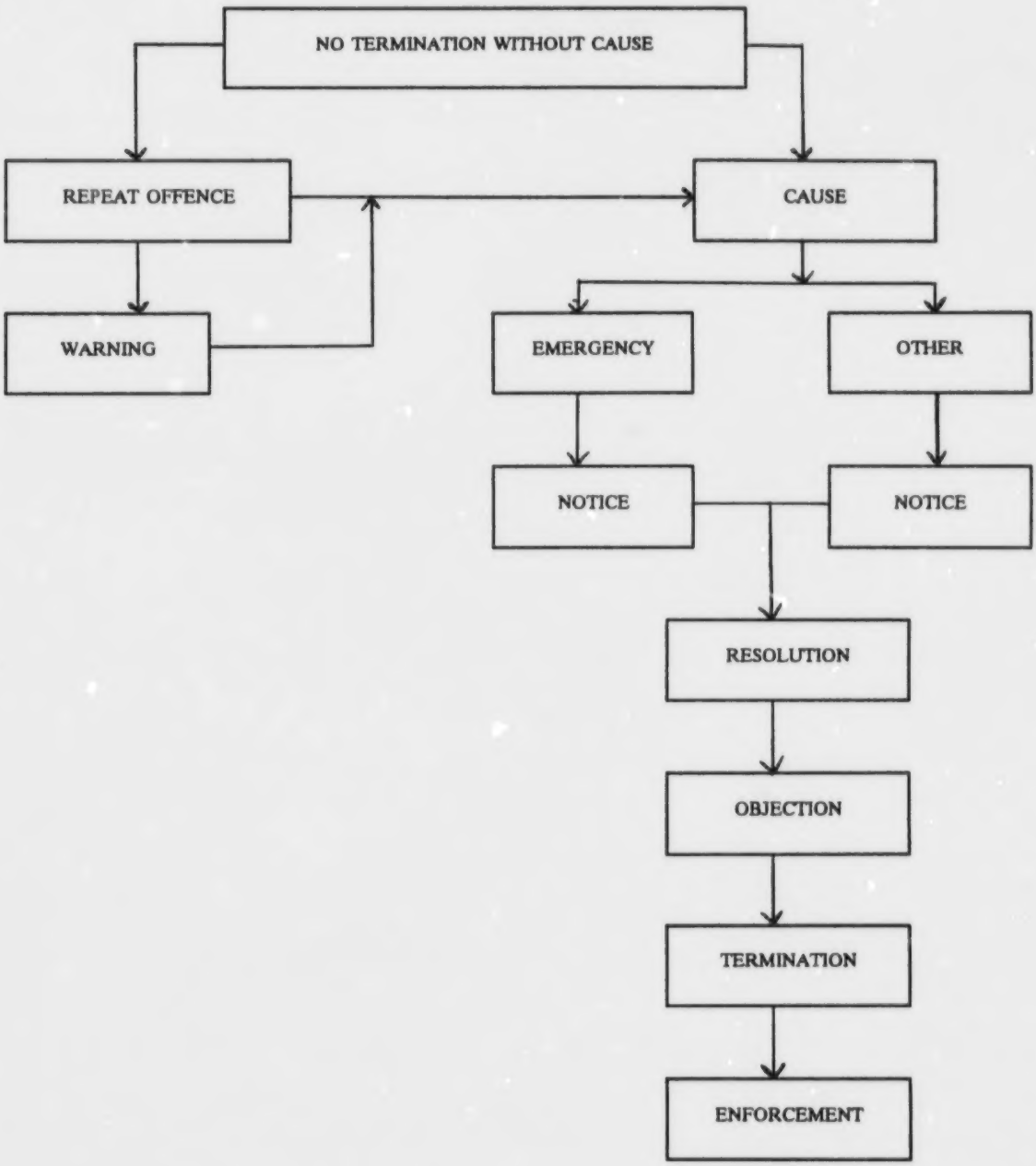
substantial breach by a tenant to have a pet, and subject to the sanction of eviction, as discussed in the substantial breach section of this report.

8.3.2 Security of Tenure Model

A flow chart depicting the operation of the Committee's security of tenure model is depicted below:

Shown in the model is a path dealing with repeat offenses. For example, a landlord is entitled to have the tenant pay the rent when due. If the tenant is habitually late in payment of rent, the landlord is justified in terminating the tenancy. The model proposed would not only require a repeat offence but a warning by the landlord to the tenant as a condition precedent for the right to terminate.

SECURITY OF TENURE MODEL



8.3.3 Formalities of Termination Notices

ISSUE: What formalities must be observed in respect of the notice of termination, regardless of the reason it was served.

DISCUSSION:

SERVICE

There is a practical inconsistency in the legislation as to when the notice of termination for a month-to-month tenancy may be served. While the Act[86] requires service prior to the first day of the final month of the tenancy, tenants are most often required to pay their rent on the first day of a tenancy month and therefore assume, incorrectly, that their notice to quit can be served on the same day as they pay their rent. The Committee heard that landlords have no strong objection to tenants being able to serve a notice to quit on the same day which rent is due, even if that day happens to be the first day of the final month of the tenancy. To allow service on the same day as the rent is due would eliminate some needless confusion. The date on which those notices should be served should be consistent between landlords and tenants.

It is proposed that notices to quit that may be served by a tenant or a landlord can all be served on or before the first day of the tenancy period. The effective day of those notices to quit will be dependant on a number of factors. Firstly, for the landlord it would depend on the cause associated with the notice. Secondly, for the tenant it would depend on the length of the periodic tenancy. The

[86] Act, Section 6

notice periods for weekly, monthly and yearly periodic tenancies which are currently specified in the Act[57] are sufficient subject to the ability to serve the notice on the first day of the last tenancy period.

TRANSFER OF POSSESSION

In conjunction with the service of the notice, there is a side issue which has caused concern: the time of day the actual exchange of possession of the premises should be effective. The Act presently provides no guidelines on this issue. The Committee believes it is reasonable to allow the landlord to prepare for the commencement of the next tenancy at 12:00 noon on the same day as the prior tenancy ended. The inconvenience to one tenant moving out and the next tenant moving in to change possession at 12:00 midnight of the last day of the tenancy are obvious.

It must also be recognized that the landlord may have legitimate reasons for altering the move-in/move-out time for the change over of tenancies. There may be maintenance and repair work required for which the landlord wishes to have the unit vacant to perform that work. Therefore, the landlord will delay the time at which the new tenant will move into the unit to allow him to perform that work. It is proposed that the Act recognize that the move-in/move-out time must be flexibile to allow the landlord to make these adjustments.

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[57] Act, Section 5 (Weekly Tenancies), Section 6 (Monthly Tenancies), Section 7 (Yearly Tenanices)

FORMAT OF NOTICES

There should be a standard form of notice of termination set out in a Schedule to the Act. Landlords would be required to use a form substantially in compliance with the form set out in the Schedule in all cases where termination, for whatever reason, is to be served on the tenant. The present form and content of the notice to terminate a tenancy be retained in substantially its present form[88]. Amendments are required to this form as follows:

1) requiring that the landlord shall state the reason for the termination, in the notice.[89]
2) deleting references to commercial tenancies since the new Act will apply only to residential tenancies.[90]
3) accommodating the recommendation that a notice to terminate by a tenant can be served on or before the first day of the final tenancy period.[91]

RECOMMENDATION

The Committee recommends that:

1) the Act be amended to allow for the tenant to serve his notice to quit on the first day of the last month of the tenancy to be effective the last day of that month.

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[88] Act, Section 8

[89] Act, Section 8 (1)

[90] Act, Section 8 (2) (a)

[91] Act, Section 8 (3)

2) the Act state that transfer of possession of the premises will be at 12:00 noon on the final day of the tenancy.

3) the times stated in the Act should prevail unless the landlord specifically provides in the lease otherwise.

4) forms of notice should be standardized in a schedule to the Act.

8.3.4 Tenant's Remedy for Improper Termination

ISSUE: If the landlord terminates the tenancy for an unauthorized cause, the tenant should have access to an adequate remedy.

DISCUSSION: The Committee felt that it is unreasonable for a landlord to wish to evict a tenant for the following reasons:

(a) Eviction solely for the purpose of raising the rent;

(b) Discrimination prohibited by Federal or Provincial legislation;

(c) Presence of children in the tenant's family, except a possible exception for residential complexes in which it is clearly stated that it is operated for households without children;

(d) Use of the residential premises by a friend or acquaintance of the landlord and not the landlord personally or to members of his immediate family;

(e) Retaliatory evictions as a result of the tenants complaining over the landlord's breach of covenants.

Not only should the landlord be prohibited from evicting the tenant for these reasons, but the tenant should be given a remedy if the reason for eviction does fall within one of these categories.

The Committee recognizes that there are a number of circumstances in which it would not be appropriate for landlords to terminate a tenancy agreement. The Committee proposes that a clause be inserted in the Legislation providing that if the tenant can prove that the landlord has terminated the tenancy for substantially one of those prohibited causes, the tenant should be entitled to damages. Those damages would be the tenant's additional rental cost for an appropriate period of time plus moving and other miscellaneous expenses directly associated with the termination.

RECOMMENDATION

The Committee recommends that:

1) The landlord be prohibited from terminating the tenancy for the following reasons:
   (a) Eviction solely for the purpose of raising the rent;
   (b) Discrimination prohibited by Federal or Provincial legislation;

(c) Presence of children in the tenant's family, except a possible exception for residential complexes in which it is clearly stated that it is operated for households without children;

(d) Use of the residential premises by a friend or acquaintance of the landlord and not the landlord personally or to members of his immediate family;

(e) Retaliatory evictions as a result of the tenants complaining over the landlord's breach of covenants.

2) That if the tenant is able to show that termination occurred as a result of one of these causes, the tenant should be entitled to damages.

8.3.5 Tenant Remedy for Eviction through Rent Increase

ISSUE: Rental increases can effectively terminate a tenancy in legislation which provides for security of tenure without rent control or rent review.

DISCUSSION: The Committee is concerned that, in order to protect any security of tenure, there should be a mechanism to prevent landlords from fabricating reasons for termination of the tenancy which were not legitimate. As an example, in absence of rent control, how could a tenant be secure against constructive eviction by a landlord simply increasing the rent?

The most significant of this list of potential breaches not adequately covered by the present legislation are those dealing with

arbitrary evictions under a security of tenure scheme and rent increases with the dominant purpose of eviction.

Rent increases take on a greater significance in a landlord and tenant regime in which the tenant is provided with some measure of security of tenure. There is always the possibility that a landlord may not have legitimate cause to evict a tenant but raise the rent unreasonably in an effort to effect an eviction. If there is not some method for a tenant to address this issue, any security of tenure provided would be less effective.

As discussed elsewhere in this report, the Committee felt that rent controls, in the traditional sense, were not condusive to the overall health of landlord and tenant relationships in Alberta or to the supply of appropriate housing and, therefore, not appropriate for this Province[92]. However, if the dominant purpose of a rent increase is to effect an eviction of a tenant, the tenant should have some ability to have this rent reviewed. The Committee considered what the specific wording of the test would be in determining whether a rent increase was for the purpose of eviction. The Committee considered whether the test should be whether the rental increase was for the "sole purpose" of eviction, or whether if the tenant was able to establish that eviction was the "dominant purpose" would be sufficient. It has been suggested that if the tenant can establish that "one of the purposes" of the rental increase was eviction that may be sufficient.

[92] See 10. "Rent Increases and Rent Control"

In all of these three alternative tests, the proof by a tenant of a landlord's intention would always be a question of fact and, in most circumstances, very onerous on the tenant.

Remedies that could be available to a tenant to deal with a rent increase for the purpose of eviction, regardless of the final formulation of the test, could be one or more of the following:

1. Allow the tenant to file an objection to any rental increase;
2. Allow the tenant to apply for an abatement of rent;
3. Allow the tenant to dispute the rental increase in a Court action;
4. Allow the tenant to avoid paying the rent increase if it is determined that the increase was for the purpose of eviction;
5. Provide a provision that deems the increase to be for the purpose of eviction in circumstances where the tenant vacated the premises as a result of the rent increase and the landlord did not re-rent the premises at a rent that approximates the rate which resulted in the tenant vacating the premises.

Except in proposal #5 above, the Committee was of the view that the onus would remain on the tenant to prove that the rent increase was for the purpose of eviction. It would be onerous and perhaps impossible to prove an intent on the part of the landlord.

To provide the tenant with an opportunity to object to every rent increase on the basis that it may be for the purpose of eviction would, in the Committee's view, be counterproductive. That would in

effect establish a rent review procedure in the Legislation. It is the Committee's observation that Provinces in which rent review regulations operate they have become extremely time consuming, expensive and cumbersome administrative processes that serve neither the landlords nor the tenants interests.

It is the Committee's recommendation that the fifth alternative, outlined above, be incorporated into the Legislation to allow the tenant some form of remedy to deal with rent increases for the purpose of eviction.

In all circumstances, the tenant only need show that the premises were relet within two months of the tenant vacating at a rate less than 90% of the total increased rent imposed upon him prior to him leaving the premises. Once that is established, the increase would be deemed to be for the purpose of eviction. The tenant would not be in a position to bring such an application or seek a remedy unless it can be established that the rental rates were in a range required. The landlord would, of course, have the opportunity to rebut the presumption with evidence clearly establishing the rental increase was justified on economic or market grounds and justifying the subsequent reduction to the replacement tenant.

The remedy available to the tenant would be damages based on the following:

1. His moving and relocation expenses.
2. Any reasonable increase in rental paid by the tenant in similar accommodation in excess of that which the tenant would have paid in the previous accommodation had the inappropriate rent increase not occurred.

The tenant's claim would be limited to an appropriate period of time. Three months was felt to be an appropriate period for indemnity and was a sufficient deterrent to the landlord.

3. Other costs and expenses directly related to the landlord breach that would be just and equitable for the landlord to pay under the circumstances.

The Committee believes that if it is established that one of the purposes of the rental increase is eviction, that would be sufficient to involve the proposed penalties. In other words, even though the landlord may be able to establish that the magnitude of the rental increase could be justified on economic or market criteria, if eviction of the tenant was even a minor purpose for the increase, then the tenant would be entitled to damages.

RECOMMENDATION

The Committee recommends that the tenant should have a remedy if the landlord evicts the tenant through a rent increase. The remedy should have the following features:

1) The tenant will be entitled to damages, including actual moving expenses and other costs if he can show that one of the purposes of the rent increase was eviction.

2) If a tenant actually vacated and within two months of vacating, the premises were not re-rented at a rate at least 90% of the total rental rate, the increase will be deemed to be for the purpose of eviction.

8.3.6 Retaliatory Evictions

ISSUE: The tenant should have protection against other unreasonable evictions, or evictions that are not for one of the acceptable causes.

DISCUSSION: The present provision protecting tenants from retaliatory evictions[93] needs to be substantially reworked. It is the Committee's view that this provision is inadequate in its present form, to fully protect the tenant from retaliatory evictions by the landlord. Even in a rewritten form, the Act might not necessarily prevent all retaliatory evictions by landlords, but an enhanced provision could give tenant's a remedy, or provide the Department with a means of prosecuting landlords who engage in retaliatory practises.

The revised Act should provide full protection to the tenant in the tenant's exercise of any of his rights and remedies under the Legislation. In addition, it should protect the tenant from retaliation following a complaint or request for an investigation or inquiry under any Legislation, regulations or bylaws, applying to residential premises or the landlord and tenant relationship. The present reference to the Public Health Act[94], only, is totally inadequate. In addition to the Public Health Act there are numerous other health and safety building

[93] Act, Section 11

[94] R.S.A. 1980, Chapter P-27.1

regulations which apply to residential premises and they should be referenced in the Act.[95]

It is proposed that Section 12 be retained in its present form.

RECOMMENDATION

The Committee recommends that the new Act should provide protection from retaliatory evictions for a tenant who exercises his rights or remedies under this Act or any other laws or regulations which apply to residential premises.

8.4 Termination by Tenant

ISSUE: If landlord's ability to evict is limited, should the tenant also have limitations placed on his ability to terminate?

DISCUSSION: Landlords argue that with an increase in the tenant's security of tenure should go a reduction in the ability of a tenant to terminate the tenancy and that, in any case, the 30 day notice to terminate is too short. This argument overlooks the fact that even property owners are able to divest themselves of that ownership in a short period of time.

To require a tenant to provide lengthy notice of his intention to move would not be appropriate, since it would restrict a tenant's

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[95] Some of which are referred to in this Report in 6.1.1 "Landlord's Duty to Repair, Maintain and Clean"

ability to move even more than that of a property owner. Landlords who wish to secure their tenants for a longer term have the option of using fixed term tenancies.

RECOMMENDATION

The Committee recommends that the present one clear tenancy month's notice, required to be given by a tenant of his intention to vacate the premises, under the terms of a month to month tenancy, should be maintained.

8.5 Employee Tenancy

ISSUE: Special concerns were raised about the problems of an employee who receives accommodation as part of his employment agreement.

DISCUSSION: The present Act[96] provides that where the tenancy is connected with employment, the notice required to terminate the tenancy is equal to the notice required to terminate the employment or one week's duration, whichever is longest.

The Committee heard several submissions from tenants who were also employees of their landlord. They felt they did not receive adequate protection from the present legislation. The minimum period of one week duration was not adequate to allow them to find

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[96] Act, Section 9

alternative accommodation. In many cases, the notice provided to them by their landlord was substantially less than the one week duration mandated by the Legislation. This issue arises most frequently with respect to the residence and the employment of "Resident Managers" employed by landlords to manage and operate, on a daily basis, residential tenancy complexes.

These tenants are not concerned about the landlord's ability to terminate the tenancy on notice that is parallel to that required to terminate the employment relationship, but rather that the notice provision should be longer than what exists in the present Legislation. Tenants are satisfied that the additional protection provided to other tenants in a non-employment situation by security of tenure should not apply to them when the premises are being rented from their employer as part of the employment relationship.

Employers want to have the right to have the tenant removed as quickly as possible following the termination of employment because, in most cases, the residential premises would be required by the employer to house the replacement employee.

The Committee noted that the Employment Standards Code[97] gives minimum notice requirements for the termination of employment. The present Act does not reference the Employment Standards Code but appears to establish its own notice period.[98]

A complicating element is introduced when an employee is terminated for cause. The law provides that an employee can be

[97] R.S.A. 1980, Chapter E-10.2

[98] Act, Section 9

terminated "forthwith" if the employer has cause. Termination for cause complicates the determining of an appropriate notice period for removal of that employee from residential accommodation associated with that employment. Should the employer be allowed, in circumstances which clearly justify terminating the employment for cause, to "forthwith" terminate the residential tenancy relationship as well? It is the Committee's view that landlords who provide residential accommodation in conjunction with employment should be required to recognize that, in addition to the standard employment arrangement, there is a special relationship created with respect to the residential tenancy and that additional latitude is required when removing a person from their residence. The minimum notice period should apply even in cases where the employee is being dismissed for cause.

It is not the Committee's intention that landlords be prohibited from using the substantial breach provisions that would be incorporated in the Legislation for tenants who are also employees. Landlords would clearly have the opportunity to avail themselves of those provisions when the circumstances warrant. On the other hand, it would not be the Committee's intention to incorporate, in those substantial breach provisions, any reference to the additional obligations of an employee under an employment relationship.

It is the Committee's view that the Act should provide for a minimum period of notice for the termination of a residential tenancy relationship connected with employment. That notice should provide the tenant with an appropriate period of time to locate alternative

accommodation while recognizing the landlord's requirement that the suite be available for the next employee.

The present Act is substantially in compliance with the requirements of the Employment Standards Code. That Legislation provides for a minimum notice to terminate employment of at least one week for the shortest term of employment referred to in the Legislation. Longer periods of notice of termination are required when the employment relationship has continued for a longer period of time. It is recognized that these notice periods, in the Employment Standards Code, are merely guidelines set out as minimums and that the Courts are always in a position to impose longer periods of notice when circumstances warrant.

The problems incurred by tenants when a landlord does not comply with the requirements of the Act are difficult to remedy. The tenant is often forced to vacate the premises on shorter notice than that to which he is entitled. The tenant is then limited to a claim for damages against the landlord resulting from that shorter notice. In most cases, the monetary value of such damage awards would not justify the tenant pursuing such a remedy.

Unfortunately, the Committee can see no new mechanism to rectify the problems incurred by tenants when landlords breach this provision of the Act. The Committee recommends that breaches of this portion of the Act[99] be included as an offence under the Act. The Department of Consumer and Corporate Affairs, in its overall mandate of policing compliance with this Legislation, could bring

[99] Act, Section 9

prosecutions where warranted and thereby discourage breaches by the landlord.

RECOMMENDATION

The Committee recommends that the landlords breach of the minimum notice period for termination of a tenancy that arises from employment be made an offence under the Act.

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9. SECURITY DEPOSITS

9.1 Overview

The Committee, after receiving written submissions, perceived that security deposit disputes were the main landlord and tenant issue to be resolved. This initial perception was fuelled by information received from Landlord and Tenant Advisory Boards across the Province which indicated that the number one issue raised in both telephone and counter enquiries were about security deposits. Some of the statistics from the Edmonton Landlord and Tenant Board[100] illustrate this conclusion.

	SECURITY DEPOSIT INQUIRIES			
	METHOD OF INQUIRY		SOURCE OF INQUIRY	
	Telephone	Counter	Landlord	Tenant
1987	23%	31%	13%	32%
1988	21%	31%	11%	30%

Almost 1/3 of counter inquiries and almost 1/4 of telephone inquiries related to security deposits. Of those inquiries, almost 1/3 were from tenants.

The survey disclosed that "deductions from the security deposit" was third, behind "repairs not attended to" and "lack of upkeep of premises", in the ranking of tenant complaints. In the last two years, 33.8% of respondents indicated that they have had problems with their landlord's failure to repair the premises, 27.6% of respondents indicated that they have had a problem with the landlord failing to maintain the premises, and 14.9% of respondents indicated that they

[100] These statistics are taken from a report presented at a conference entitled "Speaking out: A Provincial Conference on Tenant's Issues", April 28 and 29, 1989, in Edmonton

have had problems with deductions from security deposits. While the Committee's initial perceptions of the magnitude of the security deposit problem were not supported in the survey results, the survey did demonstrate that a significant percentage of tenants do experience problems in this area.

The major complaints by tenants in the written submissions were that the landlord routinely and without apparent justification retained all, or a substantial portion, of the security deposit or simply failed to make any accounting whatsoever to the tenant of the security deposit without returning it.

Landlords submitted that security deposits protected them from damage by the tenants or rental arrears. However, in most cases where the tenant had substantial arrears of rent or caused substantial damage to the premises, or both, the maximum security deposit of one month's rent was insufficient to cover the landlord's losses.

Tenants, who complained that the security deposit provision was being abused by landlords, requested that the security deposit be abolished and, at the very most, be replaced by a first and last month's rent deposit. Landlords were adamant that they were entitled to the protection of a security deposit. They argue that the tenant has been given the use of the landlord's property during the term of a lease and the landlord is entitled to protect his reversionary interest in the property.

The Committee heard complaints from tenants that the present security deposit procedures in the legislation reversed the proper onus of proof. The Act effectively requires the tenant to take the initiative to pursue the landlord for the return of the security deposit and to

prove that the tenant caused no damage to the premises. The Committee is of the view that the present legislation, by placing the onus on the tenant to recovering the security deposit, is unfair and inequitable and, in need of change.

This report deals with the security deposit itself first, and recommendations are made to alter some aspects of the security deposit. Secondly, the Committee proposes changes in the method that disputes about security deposits are settled.

9.2 Abolish the Security Deposit?

ISSUE: Should the problems associated with the security depost be eliminated by abolishing the security deposit altogether?

DISCUSSION: As an alternative to the security deposit, the landlord could be restricted to obtaining a deposit from the tenant for the last month's rent only. However, the Committee was unanimously of the view such a proposal would be counterproductive for the very tenants requesting abolition of the security deposit. It was the Committee's view that the security deposit was requested by the landlord to protect the landlord from anticipated damage to the premises by the tenant or a breach by the tenant of his covenant to pay rent when due. If the landlord was without a deposit to cover those anticipated problems, the landlord could become more selective in renting accommodation to tenants who were perceived risks in those areas. As a consequence, the very tenants who have difficulty working with the present security

deposit legislation would be faced with a reduced choice of rental accommodation.

Studies[101] conducted in Ontario suggest that the abolition of the security deposit would not result in an increase in tenant-caused damages to the premises. The removal of the security deposit would only serve to eliminate a fund to which the landlord could have easy access to compensate for tenant caused damage. The Province of Ontario presently prohibits a security deposit for other than the last month's rent. In discussions with landlord groups in that province, the Committee was told that the Ontario scheme provides no protection for landlords from damage to the premises by tenants. Landlords in Ontario are forced to proceed to Provincial Court seeking a judgment against the tenant for the damage. The information received from landlords in Alberta, as well as in Ontario, is that the tenants who are most likely to cause damage to the premises are also those tenants who are most likely to vacate the premises leaving arrears of rent and are least likely to be in a position to pay any judgment obtained against them. As a consequence, landlords in Ontario report that, while being successful in Provincial Court in obtaining judgments against tenants for damage to premises, they are very rarely able to recover on those judgments. Even if the removal of security deposits for damage would not lead to an increase in the frequency of tenant caused damage, this is not a sufficient reason to abolish them.

Tenants in Alberta report that their major complaint with security deposits is the inability to recover them from their landlord

[101] Ontario Law Reform Commission, Interim Report on Landlord and Tenant Act, 1977

at the termination of their lease. Tenants do not complain about legitimate deductions from their security deposit, nor do they object to the landlord being in a position to require a security deposit.

RECOMMENDATION

The Committee recommends that landlords continue to be permitted to request security deposits.

9.3 Definition of Security Deposit

ISSUE: The present definition of security deposit is not sufficiently clear.

DISCUSSION: The rationale for maintaining a security deposit is to secure the landlord from arrears of rent and to compensate him for damages caused by the tenant to the premises. The deposit should give the landlord some assurance that the tenant will not leave the premises without appropriate notice and the tenant would keep the premises in a reasonable state of cleanliness, free from damage caused by the tenant's negligence. It is our view that the definition should clearly include a reference to rental arrears and all other monetary obligations of the tenant which may become a change of the property. The security deposit should also secure the payment of utilities, phone, cable television, and other charges that may be outside the concept of "rent" but ultimately find its way as a charge against the property

of the owner and for which the tenant should have the primary responsibility. The definition of security deposit should be expanded to reflect this approach.

RECOMMENDATION

The Committee recommends that the definition of "security deposit" should refer not only to liabilities of the tenant to the landlord (inclusive of rental arrears) but to those that may attach to the premises.

9.4 Amount of the Security Deposit

ISSUE: Is the present maximum amount of the security deposit adequate?

DISCUSSION: At present, the size of the security deposit is linked to the amount of rent paid. The Committee believes that if a tenant pays more rent for more expensive accommodation, that tenant is likely in a better position to afford a larger security deposit. In addition, as the rental rates increase with different accommodations, the value of the accommodation also increases, justifying a larger security deposit. The survey of tenants discloses that, while 56.7%[102] report paying a security deposit of $300.00 or less, only 15.4%[103] report paying rent of

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[102] Survey Report, Appendix 1, page 9

[103] Survey Report, Appendix 1, page 10

$300.00 or less. From the survey results the calculation of the relationship between rent levels and security deposit levels are as follows:

	Rent	S/D	
Mean	$ 441.93	$ 335.74	(75% of the rent mean)
Standard Deviation	$ 133.04	$ 158.43	
Low	$ 104.00	$ 50.00	(48% of low rent)
High	$1,200.00	$1,000.00	(83% of high rent)
# of responses	569	492	

Therefore the overall rate of security deposits charged by landlords is less than one full month's rent.

The Committee heard from landlords that the amount of security deposits they can actually charge is regulated more by the market place than by the maximum set out in the legislation. They also advised that the cost of repairs of serious damage almost always exceeds the security deposit, but there is no means of predicting at the inception of the tenancy how much damage a tenant may do. Since, overall, security deposits are less than one months rent, the Committee sees no need to change the present one month maximum.

RECOMMENDATION

The Committee recommends that the maximum of one month's rent should be maintained as the maximum for the security deposit.

9.5 Change in Amount of Security Deposit

ISSUE: Since the amount of deposit is linked to the size of the rent, should the security deposit be allowed to fluctuate with rent fluctuations?

DISCUSSION: The Committee heard numerous complaints and concerns expressed about the request by landlords, during the course of a month to month tenancy, for an increase in the amount of the security deposit. This most often occurs after a series of rental increases. The present Legislation[104], is ambiguous on the issue of whether the landlord can ask for such an increase in the security deposit over the amount paid at the outset of the tenancy, except that the total amount held by the landlord must not exceed one month's rent. Nor does the Legislation state whether the landlord must refund any of the security deposit if the rent drops below the level it was when the security deposit was paid, and the security deposit then held by the landlord is greater than the current monthly rent paid by the tenant.

Approximately 12.7% of tenants reported in the survey that they did not pay a security deposit when they first moved into their premises.[105] Of the 87.3% of tenants who paid a security deposit, the average amount paid was less than one month's rent.[106] Furthermore, landlords have advised us that where vacancy rates are high, they tend

[104] Act, Section 37

[105] Survey Report, Appendix 1, page 9

[106] See 9.4 "Amount of Security Deposit"

to ask for lower security deposits, since they believe that lower security deposits make the suites more marketable. As vacancy rates decline, landlords are able to raise the level of their security deposits.

It is the Committee's view that greater certainty in the security deposit area is required and this could be accomplished by linking the maximum amount of security depoist to the amount of rent paid during the **first** month of the tenancy. Security deposits would not be increased or decreased if the rent increases or decreases during the tenancy. If a tenant could establish that a landlord deliberately charged a high rent only for the first month or two of the tenancy to extract a large security deposit, the tenant should be able to apply for refund of a portion of the security deposit.

RECOMMENDATION

The Committee's recommends that the security deposit be fixed throughout the tenancy at a maximum amount equivalent to the amount of rent paid by the tenant during the first month of the tenancy.

9.6 Interest on the Security Deposit

It is the Committee's observation, from a review of written and oral submissions, that the industry practise is not in harmony with the Act insofar as the payment of interest on security deposits is concerned. The Act presently requires that the interest is to be paid annually by the landlord to the tenant, unless agreed otherwise. It

would appear that landlords do not pay interest on the security deposit annually unless the tenant asks for it and that very few lease agreements contain a clause specifically providing that the tenant waives his right to receive interest annually.

This departure by the industry from the requirements of the Act could be due to a number of factors. The first and most obvious is that landlords, in almost all cases, have superior bargaining power and can dictate the terms and conditions of the tenancy agreements. It is more convenient for a landlord not to have to pay interest on a security deposit to the tenants annually. Secondly, it is the Committee's observation that there is a lack of basic public education as to the provisions of the Act. Landlords and tenants simply do not, in a large number of cases, understand the legislation to the extent that they should. Lastly, a significant percentage of Alberta landlords do not retain the security deposit in an interest bearing account, but rather utilize it as part of their general revenue, retaining only sufficient amounts to meet their current security deposit refund requirements. In these cases no interest is earned to be paid to the tenant, and the landlord has little incentive to pay interest to the tenant since the "interest" payment would come from his general revenue.

The average security deposit in Alberta as determined by the Committee's survey is $335.74. The approximately 316,000 rental units in the Province would therefore represent security deposit funds of approximately $106,093,840. It is estimated that the potential interest earned on an annual basis on the estimated level of security deposits in the Province, at present rates, is approximately $11,700,000.

Interest accumulated on security deposits can be dealt with in one of several ways:

1) it can be paid to landlords as a fee for administering the funds;

2) it can be paid to tenants to compensate them for the use of the money;

3) it can be paid to a third party who is responsible for administering dispute resolution mechanisms dealing with security deposits and to handle those deposits if they are deposited with that agency; or

4) to provide a fund to compensate landlords and tenants for damages and judgments that they are unable to recover from their respective tenants and landlords.

Under the section in this report dealing with the administration of security deposits, and security deposit disputes, the Committee has made alternative recommendations concerning the issue of interest on security deposits and we refer the reader to those sections for the ultimate disposition of this issue.

9.7 Other Deposits and Fees

ISSUE: Some landlords charge deposits and fees in addition to the original security deposit.

DISCUSSION: The Committee observed, in reviewing the submissions and presentations, that a large number of landlords throughout the province require tenants who wish to have pets on the premises to provide an additional deposit. This deposit is not referred to as a "security deposit" but as a "pet deposit". Since the pet deposit is considered separate from and additional to a security deposit, the tenant might provide to the landlord a total deposit which would exceed one month's rent. The landlord's justification for requesting a pet deposit is that pets can cause damage to premises exceeding that expected of tenants who do not have pets. Those damages often result in extra costs being incurred by a landlord, in cleaning and repairing the premises for a new tenant, in excess of the security deposit.

The present definition of security deposit[107] provides as follows:

> *"Security Deposit" means any money, property or right paid or given by a tenant of residential premises to a landlord or to anyone on his behalf to be held by or for the landlord as security for the performance of an obligation or the payment of a liability*

[107] Act, Section 1 (g)

by the tenant or to be returned to the tenant on the happening of a condition" (emphasis added)

It is the Committee's view that this definition can mean that a pet deposit in reality is a security deposit. Therefore, where the pet deposit would result in the total security deposit being in excess of one month's rent, it should be prohibited by the present Legislation.

The Committee is sympathetic to the concerns of a landlord with the presence of pets in residential premises. The Committee heard submissions from landlords demonstrating substantial damage to residential premises as a result of tenants' inadequate control of the behaviour of pets. In addition, the Committee is mindful of those tenants who have allergies to animals and who would be affected by the presence of an animal in those premises under a prior tenancy.

Issues raised by pet deposits are also related to other forms of additional deposits suggested by landlords. For instance, some landlords require the tenant to provide a "key deposit". This deposit is designed to reimburse the landlord for the cost of rekeying the premises when the tenant leaves without returning the keys. Other landlords suggest that a person who smokes should be required to provide an additional deposit. Landlords observe that smoking leads to additional expenses for cleaning the accumulation of smoke deposits from walls, draperies, and carpets.

If landlords were allowed to collect extra deposits for pets, keys, smokers and so on, there would be no end to the list of items for which an extra deposit could be imposed. We do not believe this is reasonable from the tenant's point of view.

The Committee received information that some landlords in Alberta require tenants to pay a non-refundable "up front fee". This fee is stated to be for replacement of keys, cleaning carpets, damage from pets and other expenses which the landlord anticipates he may incurr as a result of the tenancy. Where this payment is structured as a non-refundable fee rather than a deposit it appears not to be caught by the definition of security deposit and is therefore not prohibited. The Committee is concerned that the payment of this fee does not recognize that there may be circumstances where the damages or expenses which the landlord seeks to be covered by the fee may not, in the end result, either occur or be the responsibility of the tenant. However, with the payment of a fee in this manner the tenant is not in a position to recover the funds if the anticipated event does not occur or he is not liable for the damage or expenses.

The principle which the Committee feels should be applied in dealing with such fees is to initially determine whether the damage or expenses will in fact occur. The next stage is to determine whether the tenant should make good any loss suffered by the landlord. If both tests are answered in the affirmative, such a fee, if proportionate to the actual expense or damage, would not be prohibited. However, where the item for which the fee is stated to cover may not occur or may not be a liability of the tenant, such a fee should be prohibited.

RECOMMENDATION

The Committee recommends that all extra deposits and conditional fees be prohibited.

9.8 Pre/Post Occupancy Inspection Reports

ISSUE: In order for security deposits to operate efficiently, the condition of the premises at the beginning and the end of the tenancy must be determined.

DISCUSSION: The majority of tenants (64.1%) reported that they completed with the landlord a written inspection report of the premises when they moved in. Of those that completed such a report, 84% reported that they received a copy of that report.

It is the Committee's opinion that the use of a written report outlining the condition of the premises, both at the beginning of the tenancy and at the end would greatly assist in resolving disputes concerning the deductions from security deposits.

It is the Committee's view that the precise contents of the report are not critical. The primary use of the report would be to allow the landlord and the tenant to prepare a document in which there is an agreement as to the condition of the premises at the beginning of the tenancy. This would provide a starting point for evaluation of the condition of the premises at the end of the tenancy.

It should be clear that the Committee does not intend the inspection report to bind the tenant to payment of any particular sum of money for the deficiencies noted on the report. The report would simply be a factual way of comparing the condition of the premises at the beginning and the end of the tenancy. The cost associated with rectifying defects would be a separate matter. Also the report would not resolve the issue as to whether any of the differences, on the two

reports, are attributable to "normal wear-and-tear", or are liabilities of the tenant.

The Committee proposes that, in order to encourage use of the inspection report, the landlord should only be in a position to apply the security deposit towards damages caused by the tenant to residential premises if the landlord has completed with the tenant a pre-occupancy inspection report which is signed by both the landlord and tenant and a copy provided to the tenant. The failure of the landlord to use the pre-occupancy inspection report, would result in the landlord being prohibited from applying the security deposit to any liabilities of the tenant related to the condition of the premises.

There would also be a time limit in which the inspection must be completed, to encourage a timely resolution of security deposit disputes.

It is important that both the landlord and the tenant have copies of the inspection report for this recommendation to work effectively. It is proposed that the failure to give the tenant a copy of the inspection report should allow the tenant to withold rent until a copy is given.[100]

Both reports (pre- and post-occupancy) should be signed by the tenant. However, where that post-occupancy report is not signed by the tenant, the landlord would have to show why he was unable to obtain the tenant's signature on the report. Justifiable reasons would be the tenant could not be located by the landlord or the tenant refused to sign the report. The tenant may be reluctant to sign the

[100] Addition to Act, Section 15(2)

report because he disagrees with the landlord on the description of the premises as listed on the report, and that his signature to the report may be interpreted as agreement with its contents. The report will need a clause allowing the tenant to sign but indicating that he does not agree with the condition of the rental unit as described in the report. If it could be demonstrated that the tenant was available to sign the report but the landlord took no steps to obtain it he would, be prevented from applying the security deposit towards the alleged damage.

It is also the Committee's view that the Department of Consumer and Corporate Affairs could assist in educating the public in the proper understanding of the tenant's responsibility for cleanliness of the premises, the landlord's responsibility for maintenance and repair, and the proper interpretation of normal wear-and-tear. These efforts would also assist in the prevention and resolution of these disputes.[109]

RECOMMENDATION

The Committee recommends that the use of an inspection report, be made mandatory. The pre- and post-occupancy report would have the following features.

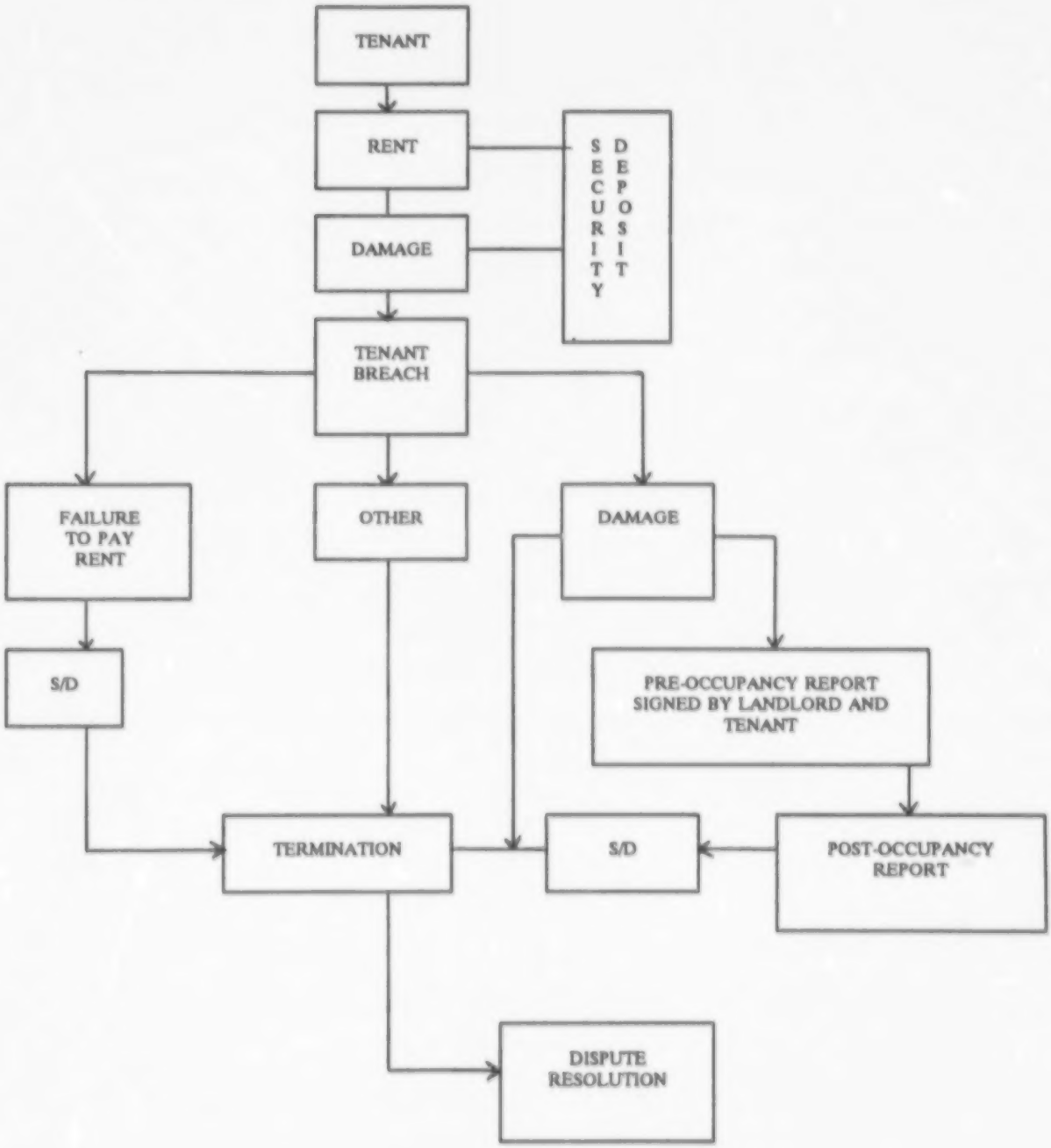
[109] See further discussion in 14. "Public Education".

9.9 Security Deposit Model

A flow chart outlining the Committee's proposal regarding the security deposit is shown below. The security deposit is shown on this flow chart as comprising two general components; one, a rental component and the other a damage component. These represent general categories to which the security deposit may eventually be applied rather than distinct deposits.

In all circumstances, the landlord would be in a position to apply the security deposit against rental arrears and any other liability of the tenant to the landlord not related to damage of the premises. However, there would be a restriction on the landlord's ability to apply that security deposit towards the tenant's damage to the premises. That restriction would be a condition precedent to the landlord's ability to so apply the damage deposit, namely the completion of a pre- and post-occupancy report, discussed above.

SECURITY DEPOSIT MODEL



9.10 Security Deposit Disputes

The Committee believes that the security deposit is an effective means for the landlord to protect the integrity of his property in the hands of a tenant. We also believe, a procedure must be established for a more equitable and timely resolution of disputes concerning the application of the security deposit.

9.10.1 Who will hold the Security Deposit?

ISSUE: There are several options for the holding of the security depoist which may result in a decrease in disputes.

DISCUSSION: The present Act does not specify any pertinent treatment of the security deposit after it is paid by the tenant to the landlord. Landlords in Alberta vary in their disposition of the security deposit. This discussion will focus on the owner-landlord, but the concepts apply equally to owners who use professional property managers. Some landlords place all security deposits received in a trust account, held separate from his general operating funds. Other landlords, deal with the security deposits received as part of their general revenue and immediately disperse it as he sees fit. Upon the tenant vacating the premises the landlord issues funds from his general account to reimburse the tenant.

It is the Committee's view that the security deposit is the property of the tenant and remains so until such time as the landlord proves that the tenant has caused damage to the premises

and the extent of that damage is determined. Only then is the landlord entitled to apply the deposit towards the cost of repairs and returns the excess, if any, to the tenant.

The Committee has observed that, in some instances where the security deposit is held by the landlord in a trust account, the landlord is either a licensed realtor or the landlord's property is managed by a real property management firm who are licensed realtors under the Real Estate Agents' Licensing Act[110]. The provisions of that legislation may allow a claimant to recover on a judgment against an a bankrupt landlord from The Real Estate Assurance fund.[111]

It is the Committee's view that, at a very minimum, the Act should require that the security deposit paid by a tenant be held by the landlord throughout the term of the tenancy in a trust account separate from the landlord's own operating funds. Interest should also be paid on that security deposit at a statutory rate set by regulation.

If landlords are insistent on having the use of the security deposit funds throughout the term of the tenancy for their own purposes and that request overrides all other reasons for holding the security deposit, then it is the Committee's view that there is no other alternative but for the legislation to abolish a security deposit in its present form and provide as does Ontario for a

[110] R.S.A., 1980 c. R-6

[111] Alberta Real Estate Association v. Tony Reuvers, unreported, Alberta Court of Queen's Bench, Mason, Q.B.J., Calgary, Action No. 8801-17453, March 8, 1989

deposit for the last month's rent only. In those circumstances the landlord would have complete access to and use of the rent deposit throughout the term of the tenancy for his own purposes. Our view is that the landlords in Alberta would reject this option in favour of having a trust account.

If landlords are insistent that they need a security deposit, in the Committee's view they are justified in that request, but those deposit funds must be kept separate from the landlords own funds.

RECOMMENDATION

The Committee recommends that:

1) At a minimum, the new Act should require the landlord to keep the security deposit funds in a trust account separate from the landlord's general revenue.
2) Interest on the security deposits should be paid to the tenant annually.

9.10.2 Security Deposit Administration - Residential Tenancy Commission

Despite the recommendation outlined above, the preferred course of action would reflect the acceptance of the Committee's recommendation contained later in this Report concerning a

Commission[112]. If that Commission was accepted, all security deposits could be held and administered by it.

Almost universally, landlords and tenants were of the view that the present Provincial Court system for the resolution of security deposit disputes is unsatisfactory.

Tenants believe that the present system it is too complicated, too time consuming, intimidating, and biased in favour of the landlord. The system requires some familiarity with the Administration of Justice and caters to more sophisticated individuals or those for which legal advice is more readily available, namely the landlords. The length of time which the process takes also favours the landlord since tenants are not always in a position to either remain in the community or to attend Court as frequently as required to have the matter dealt with.

Landlords' complain that the Provincial Court system is too complicated, too time consuming and biased in favour of the tenants. Landlords generally believe that, all things being equal, the tenant is more likely to be successful in Provincial Court rather than the landlord.

The Committee also heard concerns from landlords and tenants that lead the Committee to conclude that the approach by Provincial Courts across the Province to the resolution of landlord and tenant disputes is not uniform. The Committee is of the view that uniformity of approach is a vital element to such a system. Without uniformity of approach, the system lacks the confidence of

[112] See 11. "Dispute Resolution"

landlords and tenants and is either not used or unfavourable experiences result.

Approximately 15% of tenants reported in the survey that they have had, in the last two years, a problem with their landlords regarding deductions from their security deposits. 31% of tenants indicated they spoke to the landlord concerning their problems but almost 52% of tenants reported that the landlord did nothing to rectify the concern. We recognize that not all of these tenants reported concerns may be legitmately solvable, but there must still be a significant number that can be solved.

It is, therefore, proposed that a Commission be established with representatives across the Province authorized to receive and administer security deposits and to resolve disputes between landlords and tenants in this area.

The advantages of the Commission holding all the deposits include the following:

1) It would allow for complete control over those deposits to ensure a timely resolution of all disputes with respect to them. Landlords' requests for indemnity for tenant damage and rent arrears would be dealt with quickly and with finality.
2) Tenants would no longer have to pursue other judicial remedies to secure repayment of their security deposit.

3) The Commissions decision would be final and binding and not subject to review or appeal in any manner by any court.

4) The time limits in which a dispute would be resolved would be short to ensure that a quick resolution of the conflict is achieved.

5) The loss of tenant's security deposit funds through a landlord's receivership, bankruptcy or defalcation would be prevented.

6) Interest earned on the security deposit funds would be used to finance the Commission's operations.

7) All residential tenancy concerns could be dealt with by one, independently funded agency.

8) A minimum of administrative processing would be required to ensure that those accessing the system are not intimidated by bureaucracy.

9) Disputes would be resolved in a summary fashion and the Commission need not be bound by the rules of evidence. This would allow all interested parties to the dispute an opportunity to fully present their positions.

10) The entire landlord and tenant dispute area would be removed from the provincial court system, allowing it to devote its time to matters more suited to the adversarial court process.

RECOMMENDATION

The Committee recommends that an alternative to, and in preference to the recommendation made above:

1) A Residential Tenancy Commission be created; authorized to receive and administer security deposits and to quickly resolve disputes arising from them.

2) The Commission should be self-funding, from interest earned on the security deposit holdings.

9.10.3 Format for Resolution of Security Deposit Disputes

If a Residential Tenancy Commission is created, the Committee was concerned that the procedures used to return security deposits should be quick and efficient. The proposed mechanism for use by the Commission would be as follows:

1) At the end of a tenancy, the landlord would be required, within 10 days, to account to the tenant, in writing, regarding the disposition of the security deposit. This accounting would detail the amounts proposed by the landlord to be deducted from the security deposit, the reasons for it and the amount, if any, to be returned to the tenant. This accounting would include a copy of the post-inspection report.

The landlord would simultaneously file these with the Commission.

2) Following the tenant's receipt of this notification, the tenant would have five days in which to file with the Commission a copy of the tenant's objection.

3) If the tenant did not object within the five days the tenant would be deemed to have accepted the landlord's proposal for distribution of the security deposit. The Commission would then pay the landlord for the damages and pay the balance, if any, to the tenant. That would then end the matter and the tenant would not be in a position to bring any further action in any forum in respect of the security deposit.

4) If the tenant wished to object, the tenant would be obliged to serve a copy of that objection with the landlord and simultaneously filing it with the Commission. The copy served upon the landlord by the tenant would contain a notification of the date and time of the review to be conducted before the Board to resolve the dispute. This review date would be within 10 days of the date of filing.

5) Upon receiving the tenant's objection, undisputed amounts payable either to the landlord or the tenant would be paid out, forthwith.

6) Following the Commission's review, the disputed amount of the security deposit would be paid to the landlord and tenant in accordance with the Commission's recommendation. The Commission's recommendation would be final and binding upon both parties and not subject to appeal or review in any manner by any Court.

7) Any money that remains to the credit of the tenant may remain in the Commission to be applied towards the tenant's security deposits at his next rental unit. When the tenant ceases to rent in this Province the balance would be paid out to him.

RECOMMENDATION

The Committee recommends that the procedures used by the proposed Residential Tenancy Commission should be easy to use by both landlords and tenants and provide a prompt, final decision. A proposed mechanism is suggested by the Committee.

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10. RENT INCREASES AND RENT CONTROL

10.1 Overview

During the course of the Committee's activities, the residential rental market, in certain areas of the province, tightened considerably. Specifically, the vacancy rates in the City of Calgary plummeted during the spring and summer of 1989 to less than 1%[113]. Tightening residential markets were also experienced in most other areas of the Province but not to as great a degree.

As a result of the tightening rental market in Calgary, the Committee received numerous submissions from tenants in that city requesting rent control. These requests were a direct result of rent increases being experienced by some tenants in Calgary in the 25% to 30% range. The Committee turned to the issue of rent control in order to respond to the requests made by tenants. We received a great deal of information on the subject, and we summarize the key points in this section.

10.2 Definition of Rent Control

There must be a clear distinction between control of the number of rent increases and the control of the size of the rent increases. "Rent control" as used in this report means the control of the size of the rent increases. Presently, Alberta has no rent control in either sense. The rent increases can be of any size, be made at any time during the tenancy, and be made as often as the tenant wishes. The only restriction

[113] CMHC Rental Market Survey Report, April & October 1989

in the present Act is that the increased rent cannot be collected until three months after a notice of the increase is given to the tenant.

10.3 Arguments for Rent Control

Proponents for rent control argue that it is necessary in an inflationary market and that it has the following benefits:[114]

(a) Rent control protects the poor;

(b) Rent control is necessary to stop inflation;

(c) Rent control is necessary to stabilize the economic characteristics of the city's population;

(d) Rent control benefits racial minorities;

(e) Rent control prevents arbitrary eviction;

(f) Rent control is necessary to prevent rent gouging;

(g) Rent control is necessary to improve housing quality and reduce the number of some dwellings.

The reports reviewed by the Committee lead us to conclude that few, if any, of the alleged benefits of rent control are likely to be realized

[114] See 21, Appendix "D"

under any rent control regime[115]. If market forces are allowed to regulate the rents that are charged, rent levels will reach a level that is consistent with the value of the rental accommodation in comparison to the value of other basic living necessities. When the economy in Alberta worsened, rent levels fell, without government intervention.

10.4 Arguments against Rent Control

The disadvantages of rent control are stated to be as follows:

(a) Rent control discourages the construction of rental housing;

(b) Rent control causes maintenance of rental housing to be reduced;

(c) Rent control erodes the tax base by leading to deteriorated state of maintenance of rental property, a consequential decline in property values and assessment values, creating a relative tax burden to home owners;

(d) Rent control reduces mobility;

(e) Rent control increases the cost of providing rental housing;

(f) Rent control increases the amount of expensive public housing;

[115] See item #10 in Appendix "D"

(g) Rent control is an unsatisfactory means of redistributing income.

The literature reviewed by the Committee suggests that all of these disadvantages are seen in long-term rent control jurisdiction[116].

10.5 Rent Control in Alberta

ISSUE: Should rent control be instituted in Alberta?

DISCUSSION: Without reviewing all of the financial statements of all rental properties in the Province, which is not a realistic possibility, the Committee is unable to determine what appropriate rental levels should be on various units throughout the province, or an appropriate profit margin for the landlord. Such a task would not be productive, in our view, since the level of profitability of any rental unit is dependant on a number of factors, including the capital cost of that unit to the landlord and the present financing structure.

Despite the size of the increases, the Committee was not presented with any convincing evidence that landlords were "gouging" their tenants. It is the Committee's view that the open market conditions in this Province, over the last 10 to 12 years, have allowed rent levels to be set by market conditions and,

[116] For additional discussion of these concepts the reader is referred to Appendix "D", particularly item #10

therefore, prevented "gouging" by landlords. The present increases may be considered differently by tenants if they had available to them the full historical context of rent increases. An historical analysis of rent levels in the City of Calgary over the last ten years revealed that, even with the current round of 20% to 30% rental increases, the current rents of the units affected by those increases were below the rents being paid for those same units in 1980/1981. The history of rent levels over that 10 year period from 1980/1989 reveal that the level of rents has fluctuated with the strength of the Alberta economy. In the late 70's to early 80's, with a strong economy, rent levels were 20%, 30% and even 40% higher than experienced through the middle of the 1980's. With the downturn of the economy, rent levels declined, and as the economy has improved over the last couple of years, the rent levels have climbed.

Written information and follow-up discussions were held with representatives from landlord and tenant segments of the market in Ontario to determine the operation, scope and effect of rent controls in that province. Our conclusion from the review of this material, and these investigations, is that rent control is neither an appropriate nor desirable response to the problems experienced by tenants in this Alberta.

If none of the alleged benefits of rent control can be achieved, and it has been demonstrated that the disadvantages of rent control are clearly evident in the jurisdictions in which rent control has been in effect, rent control would not be an appropriate resolution of the present problems in the Alberta

market place. Still, some tenants experiencing substantial rental increases have advised the Committee that they are not able to afford the increases and will have no choice but to look for other, lower priced, accommodation.

RECOMMENDATION

The Committee recommends that rent control not be imposed in Alberta.

10.6 Timing of Rental Increases

ISSUE: If rent control is not accepted, what else might be accomplished within the framework of residential tenancies legislation?

DISCUSSION: Some tenants who have experienced large rental increases agreed in discussion with the Committee that the level of rent that they are paying after the increase is not inappropriate for the unit in which they are residing, but they are concerned that the increases should have been phased-in over a longer period of time in smaller increments. This would have allowed them an opportunity to accommodate the increases in their family budgets.

Tenant's may be unable to deal with rental increases that occur too frequently. Some tenants have complained that they are experiencing rental increases almost on a monthly basis. They indicate that this is disruptive to their budgetary process and causes

a constant need to realign and adjust their finances. With monthly increases they have little opportunity to plan over the longer term.

It is the Committee's view that an appropriate balance should be struck between the tenant's request for phased-in rental increases and for some breathing room between increases, and the landlord's right to increase rents when the landlord deems it appropriate for economic reasons. Therefore, it is proposed that the Act[117] be modified to prohibit any rental increase by the landlord any more frequently than three clear tenancy months from any prior increase. In addition, the reference to "at least 90 days" in the Act should be deleted and replaced with a reference to "at least three clear tenancy months".

The Act should provide that any increase in rent for a fixed term tenancy is only available to a landlord at the end of the term, unless alternative provisions are contained in the lease. The notice period in such cases should still be a minimum of three months.

The rent payable on a unit should be tied to the tenant rather than the tenancy. This would clearly allow the landlord the opportunity to increase or decrease the rent at the end of one tenancy and prior to the commencement of the next tenancy without the need for three clear tenancy month;s notice and without restriction as to when the prior rental increase occurred.

[117] Act, Section 13

RECOMMENDATION

The Committee recommends that:

1) A rental increase should not be permitted any more frequently than three clear tenancy months from any prior increase.

2) This limitation should not apply when a new tenant is moving into the premises.

11. DISPUTE RESOLUTION

11.1 An Alternate Dispute Resolution Mechanism

The creation of a Residential Tenancy Commission ("Commission") or has been proposed as a response to the problem of efficiently resolving disputes between landlords and tenants over security deposit issues. As a result of court decisions in Alberta and Ontario it was felt that it may not be possible for the Provincial government to create a body to deal with termination of tenancies and eviction of tenants, or that there is a "Section 96 problem" with doing this. We propose to outline the basic "Section 96" issues and suggest some possible characteristics of the Commission that may allow it to achieve the goals of a comprehensive dispute resolution mechanism, while minimizing the constitutional questions. No recommendation can absolutely ensure that such a Commission will be safe from a challenge on constitutional grounds but, after examining the tests which the courts may use to determine the constitutionality of such a body, it may be possible to discourage challenges through careful drafting of the Commission's powers and functions in new legislation.

11.2 Section 96, The British North America Act

> *The Governor General shall appoint the Judges of the Superior, District and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick.*

During the century since this clause was written, the meaning of its bare words has been refined. "Governor General"

now means "federal government only". In the case of Alberta, "Superior, District and County Courts" means "Court of Queen's Bench". Section 96 reads as a mere division of the power of appointment of judges, but it has been interpreted to mean that Provincial Governments are not able to validly create bodies which have powers similar or "analogous" to the courts described in that clause.

11.2.1 The Problem

Section 96 is used when a decision of a provincially created body is appealed. In addition to questioning the substance of the decision, one of the grounds used on appeal is that the body that gave the decision was not properly established because it infringes the jurisdictions normally given to "Superior, District and County Courts" ("Section 96 courts"). In other words, the decision of such a body cannot stand because the body itself is unconstitutional.

Provincial governments would prefer to create a body that will not be challenged, and potentially declared invalid, after time, money and effort has been spent in establishing and running such a body. The task is to establish the Commission proposed in this Report, without facing these challenges. A logical place to look for guidance in this task would be in the court decisions where the constitutionality of similar bodies has been challenged.

11.2.2 The Test

What do the courts look at to determine whether a particular provincial body infringes the powers of the Section 96 courts? The primary test comes from the decision of the Supreme Court of Canada in Reference Re: The Residential Tenancies Act, 1979, written by Mr. Justice Dickson[118].

This case arose in order to finally deal with questions that were raised concerning a Residential Tenancies Act proposed by the Ontario Legislature. The Ontario Cabinet submitted the following questions to the Ontario Court of Appeal:

1. *Is it within the legislative authority of the Legislative Assembly of Ontario to empower the Residential Tenancy Commission to make an order evicting a tenant as provided in The Residential Tenancies Act, 1979?*

2. *Is it within the legislative authority of the Legislative Assembly of Ontario as provided in The Residential Tenancies Act, 1979, to empower the Residential Tenancy Commission to make orders requiring landlords and tenants to comply with obligations imposed under that Act?*

[118] [1981] 1 S.C.R. 714

To both questions, the Ontario Court of Appeal answered "no". The Province appealed to the Supreme Court of Canada.

Mr. Justice Dickson derived from the existing case law a three step test to determine what was beyond the power of the Province when the Province created a decision making body. A summary of the three steps follows.

STEP ONE

The first step is to examine the historical powers of Section 96 courts. The question to be asked is:

"Does the power or jurisdiction of the provincial body in question conform to the power or jurisdiction exercised by superior, district or county courts at the time of Confederation?"

If the power or jurisdiction is not "broadly conformable" to the jurisdiction formerly exercised by Section 96 courts, that is the end of the matter, and the provincial body is validly established. If the historical evidence indicates that the powers exercised by the provincial bodies are identical or analogous to those exercised by Section 96 courts at Confederation, the test proceeds to step two.

STEP TWO

The second step is to consider the function within its institutional setting to determine whether the function is different when viewed in its context. The question to be asked is:

"Can the function still be considered to be a judicial function carried out by Section 96 courts when the institutional setting is examined?"

One of the issues examined in this step is the nature of the question which the tribunal is called upon to decide. A judicial task, carried out by Section 96 courts, generally involves questions of 'principle'; the consideration of the competing rights of individuals or groups and the resolution of private disputes between parties. This can be contrasted with the resolution of questions of 'policy', involving competing views of the collective good of the community as a whole.

A Section 96 court is generally called upon to make a judgement through the application of a recognized body of rules in a manner consistent with fairness and impartiality. The wider the scope the provincial body has in arriving at a decision and the broader the issue that is considered, the less likely it will be considered to be infringing on Section 96 powers. However, if the power or jurisdiction is exercised in a judicial manner, then it becomes necessary to proceed to the third and final step in the test.

STEP THREE

The third step is to determine the importance of the judicial function in the entire institutional context of the provincial tribunal. The question to be answered is:

"Are the judicial powers central to the establishment of the Provincial tribunal?"

The grant of judicial power to a provincial body may still be valid (even though step one and step two have been failed) if the impugned judicial powers are merely incidental to the achievement of a broader policy goal of the legislation or if they are merely subsidiary or ancillary to general administrative functions assigned to the tribunal. The provincially created scheme is only invalid when the adjudicative function is a sole or central function of the tribunal so that the tribunal can be said to be operating 'like a Section 96 court.' The more administrative tasks that such a council has, the less likely the Commission would be considered to infringe on Section 96.

11.2.3 The Result

At each step of the test, the Supreme Court found that the Residential Tenancy Commission established by the Ontario Residential Tenancies Act was acting like a Section 96 court. The provisions of the Act creating the Commission were held to contravene Section 96 of the British North America Act and they were declared invalid or ultra vires the Province of Ontario. As a consequence, the Ontario Government did not proclaim the sections of the Residential Tenancies Act that infringed the British

North America Act, and landlord and tenant disputes[119] are still dealt with by the Ontario court system.

A decision of the Supreme Court of Canada is the final word on the issues discussed in the decision, and is applicable everywhere in Canada. It is therefore important to remember that the Supreme Court did not decide that all provincially created bodies dealing with landlord and tenant issues are invalid. There are other provinces in which Rentalsmen or other bodies give eviction orders to tenants and possession orders to landlords and are still operating today, despite the Supreme Court of Canada's decision[120]. Mr. Justice Dickson's decision provides a set of rules which govern the proper creation of such a provincial body. He specifically left open the possibility that such bodies having such powers could be created in a constitutionally valid way[121]. The next section will attempt to give some suggestions for the use of those rules in the creation of the Commission.

11.3 An Alternate Dispute Resolution Mechanism in Alberta -- A Proposal

The following are suggestions of what might be used to validly create a Commission with the widest possible powers, following the three step test outlined by the Supreme Court.

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[119] With the exception of rent control which is dealt with by a separate body, and separate legislation

[120] Particularly New Brunswick which has a comprehensive rentalsman

[121] [1981] ISCR 714 at p.750

STEP ONE

Any scheme that purports to give to the Commission the power to deal with evictions and possession of property will fail the first part of the test.

The Alberta Court of Appeal[122] answered 'yes' to the following question:

Would provincial legislation that authorized a provincially or municipally appointed tribunal to:

(a) grant Orders of Possession to a landlord in respect of premises occupied by a tenant, or,

(b) grant Orders for Specific Performance of a tenancy agreement

contravene any provision of the British North America Act, 1867, as amended?

The important powers (granting orders of possession, eviction orders) that are needed to allow the Commission to deal effectively with landlord and tenant matters will undoubtedly tread upon the jurisdiction normally considered to be part of the historical Section 96 powers.

Unless the powers to grant eviction and possession orders are not given to the Commission, the first step of the test will be failed. In order to have a body that is able to deal with all landlord and tenant matters, these powers should be given to the Commission.

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[122] Reference Re Constitutional Questions Act (Alberta), (1978) 7 R.P.R. 104, Alta.S.C.A.D.

STEP TWO

The Alberta Court of Appeal, in the decision described above, had no institutional context to look at, so that decision cannot be of much use in assessing what factors may be considered in this second step of the test. Even though the powers the Commission exercises may infringe on the historical powers of section 96 courts, the way the Commission is structured to carry out its tasks might preserve its overall validity. Issues to be considered include:

(a) Normally, a landlord and tenant dispute is one between a landlord and a tenant, and there is usually no question of collective or group rights and obligations. It is difficult to describe a clear, overall policy goal of the Commission, meaning the Commission would be similar to a Section 96 court in this aspect.

(b) Having an independent investigative function may differentiate the Commission from a Section 96 court. Unlike the passive courts, who rely on the parties to bring disputes to them and lawyers to argue each side, the Commission may be empowered to actively gather information upon which to determine the issues before it. The New Brunswick Rentalsman, for example performs a separate investigative role prior

to the issuing of a compliance order, notice to quit or eviction order. The order is issued as a consequence of that investigation and it lacks formal procedures because of limited time frames. In addition, the New Brunswick Rentalsman is empowered to carry out the obligations of the landlord, which it also distinguishes it from a court.

(c) A statutory direction to determine a matter on "the real merits" or "as appears just" apparently will not be sufficient to allow a provincially appointed Commission to render a decision apart from the strict legal rights of the parties[123], and that makes it similar to a Section 96 court. However, a further statutory qualification specifically dispensing with the strict application of legal precedent might allow a policy-oriented, non-judicial decision[124], and may distance the Commission from a section 96 court.

(d) Having an adjudicative process involving a judicial form of hearing is one of the hallmarks of a power that is exercised judicially. New Brunswick has no requirement and indeed no provision for a formalized hearing before a Rentalsman for the adjudication of

[123] [1981] ISCR 714 at p. 742

[124] Pepita v. Doukas (1979), 16 B.C.L.R. 120 (C.A.)

rights, and this may tend to distinguish the Rentalsman from a Section 96 court. It is important to note that the administrative law concepts of "procedural fairness", "natural justice" will still apply to the Commission so the council will have to be fair to the parties before it, whatever procedures it uses.

STEP THREE

A judicial power or function may be validly exercised by a provincially appointed Commission where the power or function is not divorced from but intertwined in a broader administrative scheme, and is not the Commission's sole or central function. The Supreme Court of Canada found that the Ontario Residential Tenancy Commission had at as its central function the judicial powers reserved for Section 96 courts, and that these powers could not be separated from the other matters the Commission was to handle. On the other hand, the major tasks of the New Brunswick Rentalsman are clearly non-judicial, such as administering the security deposit fund, and education and mediation functions. The Ontario Commission did not deal with security deposits since these were abolished in that Province.

There may be more likelihood of a Section 96 problem occurring if the Commission is established only to deal with disputes. If it held and administered security deposits, there may be a better argument that the "judicial function" related to the eventual disposition of the security deposit and was only ancillary to the overall administrative scheme.

The overall decision that has to be made in order to have the provincially appointed body declared valid is that: "The powers exercised by the Commission in their institutional setting are not conformable or analogous to the functioning of a Section 96 court". The simple solution to this question is to avoid giving the Commission the powers that have historically been used by Section 96 courts, avoid step one of the test, and therefore avoid any constitutional question. It may be possible, through careful drafting of the tasks and roles of the Commission, to give it the powers to deal effectively with all landlord and tenant matters and to make its adjudicative powers secondary to its broad mandates and still avoid constitutional challenges. There is also the possibility that, due to the cyclical nature of constitutional decisions (from centralist to federalist decisions), and the constitutional climate in the country at the moment, that this legislation may be upheld even if there was a challenge.

The advantages of having a body that deals only with landlord and tenant matters in the limited security deposit context have already been described.[125] The Committee has already recommended that a separate dispute resolution body be established for the administration of security deposits at least. The issues which arise in security deposit disputes will not infringe Section 96 powers. However, the best result, and the one which the Committee recommends is to remove all landlord and tenant matters from the courts and place them with a specialized, self-

[125] See 9. "Security Deposits"

funding body called the "Residential Tenancy Commission". Although the remedies required by landlords and tenants are obtainable in the courts, the landlord and tenant relationship is specific enough and the concerns of landlords and tenants about the current system are great enough to warrant a new dispute resolution mechanism.

RECOMMENDATION

The Committee recommends that a Residential Commission be established to deal with all landlord and tenant matters in Alberta.

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12. SUBSIDIZED PUBLIC HOUSING

12.1 Special Status of Subsidized Public Housing

ISSUE: The Committee was acutely aware of the need in Alberta for an adequate supply of housing for families on social assistance or with low incomes.

DISCUSSION: Subsidized housing is particularly important when vacancy rates are low and families in lower economic categories most deal with a tight rental market. Relatively fewer units are available and low income households experience reduced access to available units as a result of higher rental rates.

As rental rates continue to rise, families at the low end of the rental market may find themselves unable to afford any rental housing. It is the Committee's view that a continued adequate supply of subsidized public housing units is necessary for this portion of society. In Alberta, this segment is presently being served through grants administered by Alberta Mortgage and Housing Corporation for various Provincial and Federal funding agencies. The evidence presented to the Committee is that these programs operate effectively throughout the Province and meet the needs of the households that are targeted. The largest single complaint regarding public housing received was that substantially more subsidized public housing units are required.

The Committee has concluded that, for subsidized public housing programs to function properly, provisions in the Act relating to rent increases, security deposits and termination of tenancies must be modified.

RECOMMENDATION

The Committee recommends that:

1) Subsidized public housing programs continue to receive support and that they be expanded in areas of demonstrated need.
2) A separate part of the Act should be added to recognize subsidized public housing and to modify the general provisions of the Act to ensure proper operation of these programs.

12.2 Recognition

ISSUE: How can subsidized public housing be recognized in the Act?

DISCUSSION: The Act should specifically recognize the existence of subsidized public housing and protect its unique forms of operation. A definition is required to determine which units the special protection extends to.

RECOMMENDATION

The Committee recommends the following definition of "subsidized public housing" be added to the Act:

> *"subsidized public housing" means a rental unit rented to persons or families of low or modest income at reduced rents by reason of public funding provided by the Government of Canada, Alberta or a municipality, or by any*

agency thereof, pursuant to the National Housing Act (Canada), the Alberta Mortgage and Housing Corporation Act, and where the amount of the reduced rent is determined by the income of the tenant."

12.3 Fluctuating Rents

ISSUE: Subsidized housing tenants pay a fluctuating rent, which causes problems in the operation of the Act.

DISCUSSION:

RENT INCREASES

The amount of rent paid by a tenant in a subsidized public housing unit is determined by the gross household income of the tenant. Under one program, when a subsidized housing tenant first moves into a unit, the "lease rate" is fixed for a one year term based on 25% of the gross household income at the beginning of the tenancy. It is proposed that the standard three month notice period for rental increases apply to this "lease rate" when the landlord proposes to increase that rate following a review of the household income prior to the expiry of the leave.

During the one year term, if the tenant's household income were to drop to a level such that 25% of that monthly income is less than the amount of rent specified as the "lease rate" for that term, the actual rent payable by the tenant would be "abated" to that lower level. These abatements could occur monthly depending on the frequency of fluctuation in the tenant's income. If the tenant's income rises following an abatement, the degree of rent

abatement would be reduced, increasing the actual amount of rent paid by the tenant up to the amount of rent specified as the "lease rate". Any additional increase in the tenant's income would not increase the rent above the "lease rate" until the end of that one year term. The operation of the rent abatement system should be exempted from the three month notice period normally required for an increase in rent. The subsidized public housing authority would be able to raise or lower the abatement on a monthly basis in accordance with a formula based on the gross household income of the tenant, to the maximum of the lease rate or equivalent base rate for that year.

SECURITY DEPOSITS

Problems occur with security deposits when, as a result of a substantial reduction in a tenant's income, the amount of rent actually paid by a tenant is substantially less than paid by the tenant at the beginning of the tenancy. Abatements may be extensive enough to reduce the rent payments made by tenants to as low as $25 per month. A Master's decision in Alberta[126] has held that "rent" for the purpose of the Act is the amount actually paid by a tenant in a subsidized public housing project rather than the amount specified as the "lease rate". Given the current statement in the Act[127] that the amount of security deposit is

[126] Strathmore Housing Authority and AMHC v. Debbie Lee Wakelam, unreported, Calgary, Court of Queen's Bench, Action No. 8901-11604, Master Dalgleish

[127] Act, Section 37

limited to one month's "rent", subsidized public housing authorities may be required to refund a portion of security deposits to tenants during periods of substantial rent abatement.

The Committee's earlier proposal[128] that the amount of security deposit be fixed at the commencement of the tenancy to a maximum amount equivalent to the rent payable at that time should rectify this problem.

We are advised that not all subsidized housing programs use rental agreements in which a base rent is referred to as the "lease rate". However, all subsidized housing programs do determine the actual rental rate as a percentage of the gross household income of the tenant. Therefore, to solve the security deposit problem and problems with fluctuating rents, we propose a separate definition of "rent" in the subsidized housing portion of the legislation which will apply to those units only.

RECOMMENDATION

The Committee recommends that, for subsidized public housing only:

1) *"Rent" shall mean: that percentage figure which, when applied to the income of the tenants determines both the tenants eligibility for entitlement to subsidized public housing and the amount of payment therefore."*

2) The rent abatement system should be exempted from the three month notice period ordinarily required for an increase in rent.

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[128] See discussion 9. "Security Deposits"

12.4 Termination of Tenancies

ISSUE: Additional causes for termination are needed for subsidized public housing units.

DISCUSSION:

FAMILY SIZE

Subsidized public housing units are designed to provide a specific size and configuration of unit for a particular household size and make-up. Flexibility must be available to move households to more appropriate accommodation when family size changes.

QUALIFICATION FOR PROGRAMS

Eviction must be available where the tenant household no longer qualifies for the subsidized housing program. To allow such units to continue to be occupied by ineligible families would result in those units being taken out of the available subsidized public housing inventory and would create a hardship for households who do require such accommodation.

TRANSFER OF UNITS

Eviction must also be possible where subsidized public housing units are being transferred into a subsidized public housing program or being removed from a subsidized public housing program. For units that are being removed from the program, the tenant would have the option of paying the rent at the unsubsidized rate or moving, on appropriate notice.

REPORTING

Eviction should also be available where the tenant fails to comply with the income reporting requirements of the subsidized public housing authority. These reporting requirements are essential for proper operation of the program and for ensuring that the program is made available to only those households who qualify.

RECOMMENDATION

The Committee recommends that subsidized public housing authorities have the ability to evict tenants for the following reasons in addition to the existing causes in the Act:

1) Change in family size;
2) Failure to continue to qualify for programs;
3) Transfer of units in or out of the program;
4) Failure to report income as required.

The Committee recommends a three month notice period for these causes.

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13. LICENSING OF PROPERTY MANAGERS

ISSUE: Some problems that are currently experienced in landlord and tenant relationships may be alleviated by requiring property managers to be licensed.

DISCUSSION: Presently there is very little Government regulation of residential fee managers or residential property managers within the Province. The only legislation that may apply is the Real Estate Agents' Licensing Act[129]. This Act has the following deficiencies in its application to the licensing of residential property managers and fee managers:

1) The legislation only applies to individuals collecting rent on behalf of third parties. It does not apply to individuals collecting for properties entirely owned by the individual doing the collecting or their employees. This forms a significant percentage of managers.[130]

2) The legislation and licensing requirements are primarily directed at real estate brokers rather than property managers.

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[129] R.S.A., 1980, Chapter R-5

[130] See Survey, and also 3.2 "Current Marketplace, Landlords"

The Committee believes that the following problems exist in the Province as a result of the lack of specific licensing of property managers:

1) There is inconsistency in the treatment of tenants by different property managers and fee managers in the Province. With no licensing or regulatory body to assist managers with consistent interpretation of the legislation or the development of administrative practises, the interpretation and application of the legislation varies considerably. In keeping with the Committee's emphasis on education, it would be useful if at least the landlord had a good background in the Act.

2) The Committee has observed vast differences in the quality of property management throughout the Province. Formal, consistent, universal licensing would raise the minimum standard of property management in Alberta. Increased property management skills can assist with reducing landlord and tenant disputes.

3) Landlords are in receipt of large sums of money by way of security deposits from tenants. The Committee is not aware of any other industry in the Province where such large deposits are received from

> so many people by an essentially unregulated industry. Licensing and testing requirements would assist in the protection of tenants interests with respect to those security deposits. Licensing requirements would also serve to foster a consistent equitable approach to the administration of those security deposits with respect to authorized deductions.

The Committee proposes that the Real Estate Agents' Licensing Act be amended by adding a section dealing specifically with the licensing and regulation of residential property managers. It is the Committee's view that the Real Estate Agents' Licensing Act must clearly provide for an appropriate distinction between real estate salesmen and real estate managers. Property managers have very separate and distinct functions from real estate brokers and merit separate treatment.

It is not the Committee's intention that the licensing requirements apply to all persons in the Province who are lessors of residential property. However, the scope of the legislation should be broad enough to cover all those individuals who derive a significant portion of their livelihood from the rental of residential property. Rather than using an economic means test to determine applicability of the legislation the Committee suggests that perhaps a threshold of a certain number of residential units be used. While the Committee has not conducted an in-depth analysis of where the proper threshold should be, it is suggested that an individual who leases less than ten residential units, whether

comprising one property or several, would not be deriving the bulk of their livelihood from that enterprise.

RECOMMENDATION

The Committee recommends that:

1) Residential property managers be licensed and regulated under the Real Estate Agents' Licensing Act;

2) Property managers should be treated separately from real estate brokers;

3) The licensing requirement should extend to individuals who derive a significant portion of their livelihood from the rental of residential premises. Possibly this could be defined as anyone who leases more than ten residential units.

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14. PUBLIC EDUCATION

14.1 Need for Public Education

ISSUE: Public education about landlord and tenant issues may serve to reduce the number of landlord and tenant disputes.

DISCUSSION: As the Committee conducted a review of the written submissions and its hearings across the Province, it became apparent that a significant number of both landlords and tenants were mistaken about their rights and responsibilities under the current legislation. Even when landlords or tenants indicated they were aware of the contents of the Act and had recently reviewed it, their answers to the Committee's questions indicated an alarming level of misunderstanding. The survey of tenants indicated that[131]: almost 10% completed formal education to grade nine; almost 15% had only some high school education; 34% indicated that they were high school graduates; 37% indicated they either had some university or college education or had graduated from university; and only 2.7% indicated they had graduate school or professional training. This indicates a substantial number of tenants had not completed the basic education system. As a result they may be ill prepared to review the existing legislation to determine their own rights and responsibilities.

Only 20% of tenants indicated that they had a copy of the legislation while, when asked if they had read a copy of the Act, 40% of tenants gave a positive response. While a significant

[131] Survey Report, Appendix 1, p. 13

number of tenants responded to questions in the survey in a manner which is consistent with a correct understanding of the legislation, a substantial number answered incorrectly.[132] For example, the tenant survey reported that 35% of tenants believed that the landlord can give the tenant one month's notice to vacate residential premises without a reason. This indicates a substantial lack of knowledge by tenants of fundamental issues and highlights the need for public education.

RECOMMENDATION

The Committee recommends that the new Act must promote public education on landlord and tenant issues.

14.2 Role of Written Lease Agreement

ISSUE: The written lease agreement can be used as a tool for public education.

DISCUSSION: It is the Committee's view that landlords are in a position of influence over, and control the details of, the landlord and tenant relationship. They are in a position to positively affect the public education process. The Committee's experience with the written

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[132] Survey Report, appendix 1, p. 8

leases utilized by landlords is that a substantial number contain information which is not in compliance with the present legislation.

Since there already is widespread use of written lease agreements[133], they could be easily used to help alert tenants to the fact that there is legislation governing the tenancy relationship, and to which they may refer to determine their rights and responsibilities.

RECOMMENDATION

The Committee recommends that, where there is a written lease document used by the landlord, the lease should contain at the foot or end, in larger print than the remainder of the lease, the following:

"Notwithstanding the terms of this lease, this landlord and tenant relationship is governed by the terms of the Residential Tenancy Act."

14.3 Other Bodies

RECOMMENDATION

The Committee recommends that:

1) The Department of Consumer and Corporate Affairs and the proposed Residential Tenancy Commission could expand current

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[133] Survey, Page 12, Table 10

programs and develop new ones on the area of public education on landlord and tenant issues.

2) Being literate in the area of landlord and tenant relationships is a fundamental life skill and the Department should consider

recommending to Alberta Education that it form a portion of the mandatory curriculum in elementary education.

15. LANDLORD AND TENANT RELATIONSHIPS IN RESORT COMMUNITIES

15.1 Banff and Jasper -- Overview

The Committee met with Banff residents and discovered a number of unique concerns about the Act which exist in that community. Problems faced by landlords in Banff are no different than landlords in the rest of the Province and we believe their concerns are reviewed and addressed in the general portion of this report. However, tenants in Banff presented unique problems. The issues raised by the tenants fall into the following categories:

1) security of tenure;

2) rooming house, staff and shared accommodation;

3) security deposits;

4) physical condition of housing;

5) rent control;

6) discrimination; and,

7) privacy.

As an indicator of the degree of the problem in Banff the Committee was presented with an 1,150 signature petition calling for an amendment to the legislation which would include all of the Banff residential accommodation within the Act. The Committee

was advised that, as of the last census, there were approximately 6,200 permanent Park residents.

The Committee did not visit nor interview anyone from Jasper in order to determine whether that community experiences the same residential tenancy problems as Banff. However, development restrictions are the same in Jasper and it is likely similar problems exist although perhaps not to as great an extent as Banff.

15.2 Application of the Act

ISSUE: A large portion of the accommodation in Banff is not covered under the present Act.

DISCUSSION: The Committee's recommendation to include all residential accommodation, whether or not self-contained in the legislation (with certain well-defined exceptions) should alleviate some of the problems experienced by tenants in Banff. The issues raised by Banff tenants involving security of tenure, security deposits, privacy, maintenance and discrimination stem from the present exclusion of certain types of accommodation from the legislation.

The Committee heard that evictions with one hour notice are common in staff accommodations. Accommodations not governed by the legislation have no minimum notice requirement for evictions.

The Committee heard of frequent security deposit problems in Banff. Problems with security deposits should be alleviated once

the shared and staff accommodations come within the legislation. As at present there is no legislation governing security deposits for those types of accommodations and therefore no legislative obligation for the landlord to return them or to account to the tenant in any way with respect to them.

Banff tenants expressed a concern over privacy. For accommodation that is presently not included in the Act, there is no legislative restriction on the landlord's ability to enter the premises at will and without notice. The Committee heard this frequently occurs and occasionally the tenant involved alleges sexual harassment. The protection of privacy provisions recommended by the Committee would address this concern and would extend to the types of accommodation common in Banff.

The Committee has proposed that the legislation require that landlords maintain their premises in a habitable condition throughout the tenancy and make repairs from time to time. Once the types of accommodation common in Banff are included in the legislation this recommendation will help alleviate Banff tenants' concerns over the physical condition of their housing.

The Committee has addressed the issue of discrimination in a recommendation requiring that the landlord comply with Federal and Provincial legislation dealing with discrimination. It is our view that recommendation will address the concerns of the Banff tenant community on the issue of discrimination, and will apply to the majority of accommodation in Banff.

If the Committee's recommendations concerning the scope and application of the Act are accepted, we believe that the

problems described above will be solved in Banff as well as in other communities in the Province.

15.3 Rent Control

ISSUE: One of the major problems that Banff tenants have expressed relates to high rents and large increases in rent.

DISCUSSION: Banff workers are calling for rent control because of the very tight housing market and the very high rental rates, while being among the lowest paid employees in the Province, often making little more than minimum wage.

The average rental rate throughout the Province of Alberta is $442.00. The average rental rate for similar accommodation in Banff is twice that figure. The cause of the high rental rates in Banff is a combination of many factors some of which were able to identify as follows:

1) Banff has, in the last twenty years, become a four season resort community. Prior to that, worker requirements during the winter months in Banff were substantially less than during the summer and the accommodation requirements were less in the winter as a result. Furthermore, accommodation that is suitable for summer habitation might not be suitable for use in the winter. The Committee heard that often the summer accommodation would have no

running water, electricity or heat. Such accommodation is not habitable during the winter.

2) In conjunction with the expansion of Banff into a four season resort the businesses in the community also expanded to service that growing tourist traffic. The expansion of businesses increased the number of workers which, in turn, put an increased demand on the rental housing market.

3) The development in the townsite of Banff is controlled by the Federal Government through its Parks Canada policy. The policy of Parks Canada has been to restrict development and, as a direct result, there has been a restriction in the development of residential accommodation.

The research done by the Committee on the issue of rent control clearly pointed out that rent control is only justifiable under circumstances where the supply of residential housing is artificially restricted. The development restrictions in the housing market in Banff cause precisely such an artificial supply shortage. The rent situation in Banff is a classic case where rent control may be appropriate.

The Committee recognizes that the Province can not unilaterally effect the changes necessary to alleviate the accommodation problems in Banff, but it is suggested that dialogue be implemented with Parks Canada and the Federal Government in order to adequately address these housing problems.

The solutions to the problems in Banff are not simple nor is there one solution which will alleviate all of the problems. Raising

the development moratorium will result in additional residential accommodation. However, we doubt that sufficient additional units will be constructed to entirely relieve the pressure on rental units in that community. It is also perceived that there is not the political climate to allow for a complete lifting of such development moratorium in the setting of a National Park, nor does the Committee perceive that an absolute lifting of the moratorium is desirable in that setting. Therefore a moderate lifting of the moratorium to allow for the construction of additional residential rental accommodation would be necessary in conjunction with rent controls. Even with some additional rental accommodation, the market in Banff will continue to be very, very tight allowing for rental rates to rise well above appropriate market levels and continuing to cause a hardship on tenants requiring those accommodations.

RECOMMENDATION

The Committee recommends that:

1) Consultation should take place between the Province, the Federal Government and Parks Canada with a view to addressing the housing problems.

2) A combination of lifting development restrictions with a view to increasing the supply of rental accommodation, together with imposing some rent controls should be considered for Banff.

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16. GENERAL ADMINISTRATIVE MATTERS

16.1 Acquisition of the Interest of Landlord and Tenant

ISSUE: The present Act is not clear as to the responsibilities of a purchaser of rental property.

DISCUSSION: We reviewed the Alberta Court of Appeal decisions of R. v. Touche Ross Limited and Property Stewards Western Ltd.,[134] and Waverly Management[135] in connection with the interpretation of the present Act[136]. In addition, a representative of the Institute of Law Research and Reform was requested to speak to the Committee and comment on their recommended changes to the Act as a result of the Touche Ross and Waverly Management cases.

The Institute was concerned about the effect of the Touche Ross and Waverly Management cases on the general (Torrens) system of land registration in Alberta. The Institute's desires uniformity in the application of that system as it relates to the registration and determination of interests in land. The decisions in Touche Ross and Waverly Management upset the established system by placing security deposits in a position preferential to an encumbrance on a title which predates the payment of his security deposit, even though the tenant's interest in the security deposit is not registered at the Land Titles Office. As a result, a person who

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[134] Unreported, June 28, 1985, affirmed, unreported March 5, 1986, Alberta Court of Appeal

[135] Waverly Management Ltd. and Sobie and Dunn, 1985 62 A.R. 343

[136] Sections 14 and 40

forecloses on residential rental property is liable to the tenants for the amount of the tenant's security deposit even though this liability is not registered on the Title in any form and may have arisen well after the registration of the security holder's interest in the land.

The original proposal of the Institute was not, in their opinion, satisfactorily carried forward into the present Act, so that the decisions of Touche Ross and Waverly Management found that the Act provided for a totally different priority system than the one intended.

The Institute recommends that Section 40 of the Landlord and Tenant Act be amended to read as follows:

"*For the purposes of Section 19 (1) the respective rights and obligations of the landlord and of the tenant, based on a security deposit with respect to a Residential Tenancy Agreement, are based on real covenants relating to the tenancy*".

The Institute's report to this Committee concludes by commenting that both decisions referred to create the possibility of an interpretation of Section 40 which goes far beyond the meaning which was originally intended to be given to that provision by the Institute. Their original intention could be restored by ensuring that Section 40 be read in conjunction with Section 19 and by

ensuring that both sections are subject to the fundamental principles of the Land Titles Act[137] and the Law of Property Act[138].

The Institute in their original report, on Residential Tenancies[139] proposed a mechanism whereby potential purchasers of property would be put on notice with respect to the status of security deposits.

It is the Committee's perception that there exists in Alberta a system developed by the legal profession for the determination by purchasers of residential property of the status of security deposits. That system was developed as a result of an understanding by purchasers that they were assuming the obligations of vendors with respect to those security deposits. The Committee intends that those obligations continue under the new Act. It is felt that, rather than imposing a new administrative procedure for identifying and dealing with security deposits on a sale of residential property, the legal profession and the marketplace should be allowed to continue to develop practises and procedures to protect the interest of the parties in those transactions. It is the Committee's view that Governmental intervention in those areas is only necessary where the parties involved are not in a position to deal with those issues adequately on their own. The Committee is of the view that this is not the case with respect to the determination of the rights and

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[137] Revised Statutes of Alberta 1980, Chapter L-5

[138] Revised Statutes of Alberta 1980, Chapter L-8

[139] I.L.L.R. Report #29

responsibilities with respect to security deposits on the sale of residential property and, therefore, we recommend no change in the Legislation in respect of those issues.

Finally, if the Committee's recommendation for the establishment of a Residential Tenancy Commission is accepted, the problem of security deposits in the context of purchasers of residential property will not arise since they will held by the Council.

RECOMMENDATION

The Committee recommends that:

1) the Institute's proposed wording for Section 40 be adopted;
2) if the Commission is established, these sections could be abolished since security deposits would be held by the Commission.

16.2 Role of Landlord and Tenant Advisory Boards

ISSUE: If a new Residential Tenancy Commission is created, what will be the role of the existing Landlord and Tenant Advisory Board?

DISCUSSION: The Committee proposes that the entire operations and jurisdiction of the Landlord and Tenant Advisory Boards, as

presently constituted under the Act[140], be incorporated into the operations of the Commission and that the Landlord and Tenant Advisory Boards in their present form be abolished.

The staff of the Boards presumably would be absorbed into the staffing requirements of the Commission. The funds that the Province presently makes available to municipalities for their Landlord and Tenant Advisory Boards would no longer be required since the Commission would be self-funding through interest revenue on security deposits held by it.

This incorporation of the present Landlord and Tenant Advisory Board function into the Commission will ensure that the Commission is responsible for all aspects of landlord and tenant law in the Province. This would include dispute resolution in respect to security deposits, possession and termination notices and the dissemination of information for the purposes of educating and advising landlords and tenants about rental practises, rights and remedies.

The Commission, would over the passage of time, develop substantial expertise in the area of residential tenancy law and administration, and would thereby become an extremely effective tool in administering residential tenancy relationships in Alberta.

[140] Act, Section 49

RECOMMENDATION

The Committee recommends that if a Commission is established the Landlord and Tenant Advisory Boards be abolished.

16.3 Transition Provisions

ISSUE: The Committee recognizes that commercial leases of some small business premises are not governed by written lease agreements and such landlords or tenants may assume that the provisions of the Act govern their relationship.

DISCUSSION: It is the Committee's belief that commercial arrangements should be governed by their own written lease agreements independent of the Act proposed in this report. The Committee is also of the view that, if it is felt that legislation governing the relationship of persons in commercial landlord and tenant relationships is necessary then it should be in separate legislation. The Committee has taken a belief that commercial landlord and tenant relationships are substantially different than those governing residential relationships and are governed by very different economic and factual circumstances.

Nevertheless, it is proposed that the Act contain a provision which would allow the Act to apply to commercial leases if there is no written lease agreement and sofaras the provisions of the

legislation are capable of applying to those tenancies for a short transitionary period only.

RECOMMENDATION

The Committee recommends that a transitionary provision should be in effect for a period of one year from the enactment of new legislation to allow smaller commercial tenants an opportunity to rearrange their affairs.

16.4 Role of Provincial Court

ISSUE: If a Commission is accepted, what will be the role of the Provincial Court?

DISCUSSION: In the event the Committee's recommendation for the establishment of a Commission to resolve disputes with respect to security deposits and other monetary items related to a tenancy is adopted, the Act should specifically remove landlord and tenant disputes from the Provincial Court. The Act should also provide that the Commission's jurisdiction is absolute and not subject to appeal or review by any Court at any level for any reason.

RECOMMENDATION

The Committee recommends that:

1) if the Commission is established to deal with only security deposit issues, the Provincial Court's jurisdiction should be eliminated,

2) if a Commission is established to deal with all residential tenancy matters, all references to "Court" could be deleted from the Act.

16.5 Offenses and Enforcement

ISSUE: Some obligations added to the Act need to be enforced through the use of penalties and prosecutions.

DISCUSSION: The present Act[141] provides for the offenses for contravention of certain portions of the legislation. Those offenses are restricted to the following areas:

1) locks and security devices;[142]

2) the amount of a security deposit;[143]

3) interest payments on security deposits;[144]

4) payment of interest on security deposits;[145] and,

[141] Act, Section 50

[142] Act, Section 18

[143] Act, Section 37

[144] Act, Section 38(1)

[145] Act, Section 38(2)

5) return of security deposits[146].

The Committee recognizes that not all breaches by a landlord or tenant are of a serious enough nature to require prosecution. However, there are some landlord covenants which are very difficult to control by means other than prosecution.

RECOMMENDATION

The Committee recommends that breaches in the following areas of should also be made offenses under the Act:

1) landlord responsibility for the physical condition of the rental complex, which includes the compliance with all applicable building codes and regulations as recommended by the Committee.[147]
2) timing of rental increases[148],
3) improper notice to terminate, either due to cause or timing[149],
4) disturbance of the tenant's peaceful enjoyment of the premises.[150]

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[146] Act, Section 39(1)

[147] See 6.1.1 "Landlord's Duty to Repair, Maintain and Clean"

[148] See 10. "Rent Increases and Rent Control"

[149] See 6.2.2 "Peaceful Possession"

[150] See discussion "landlord obligations"

16.6 Other Matters

The Committee proposes that Section 25, 26, 27 and 28 be retained in their present form with modification necessary in the event an Administrative Board is established.

To bring Section 20 in line with the Committee's recommendation that the Act apply to residential tenancies only, the words in Subsection (e) "in the case of a Residential Tenancy Agreement" should be eliminated.

RECOMMENDATION

The Committee recommends that the current provisions[151] that state that the tenant is not able to waive the rights provided in the Act should be maintained. Not only should the tenant be directed to the Act in the lease document, but, despite the contents of the lease, the tenant should also have the guarantee of having the minimum rights under the Act.

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[151] Act, Section 2 (4)

17. CONCLUDING REMARKS

The Committee believes that this Report contains recommendations which address the major problems with the current legislation and proposes solutions which balance the interests of landlords and tenants. A great deal of information was reviewed and many points of view were considered in formulating these recommendations. The input of numerous individuals and groups in Alberta helped to create what we believe is a set of balanced and fair recommendations.

The Committee believes it has achieved the goal of creating a landlord and tenant system which establishes appropriate minimum standard of conduct for landlords and tenants. We believe the recommendations recognize the special characteristics of tenants in Alberta while protecting the rights of landlords to deal reasonably with their property.

The Committee's proposals, like the problems which they try to solve, tend to be interrelated. Any single recommendation in the Report should be read in the context of the whole Report in order to assess its effect on the balance of interests of landlords and tenants. For example, the increased security of tenure for tenants who comply with the Act and their lease agreement is balanced by the increased ability of the landlord to remove tenants who breach the Act or their lease agreement.

The Committee believes that the overall effect of these recommendations is to achieve a balance of landlord and tenant interest in Alberta. We look forward to seeing these proposals implemented in new landlord and tenant legisation in the near future.

18. APPENDIX "A" -- SUMMARY OF WRITTEN SUBMISSIONS

Summary with submissions received by and oral presentations made to the Committee.

BANFF

	Written	Verbal	Total
Landlord:	0	3	3
Tenant:	2	8	10
Other:	1	0	1

BEAVERLODGE

	Written	Verbal	Total
Landlord:	1	0	1
Tenant:	0	0	0
Other:	0	0	0

CALGARY

	Written	Verbal	Total
Landlord:	24	0	24
Tenant:	38	8	46
Other:	9	13	22

CAMROSE

	Written	Verbal	Total
Landlord:	0	1	1
Tenant:	0	0	0
Other:	0	2	2

COCHRANE

	Written	Verbal	Total
Landlord:	0	0	0
Tenant:	1	0	1
Other:	0	0	0

COLLEGE HEIGHTS

	Written	Verbal	Total
Landlord:	1	0	1
Tenant:	0	0	0
Other:	0	0	0

DEWINTON

	Written	Verbal	Total
Landlord:	1	0	1
Tenant:	0	0	0
Other:	0	0	0

EDMONTON

	Written	Verbal	Total
Landlord:	37	7	44
Tenant:	32	6	38
Other:	18	6	24

FORT MCMURRAY

	Written	Verbal	Total
Landlord:	1	0	1
Tenant:	0	1	1
Other:	1	5	6

FORT SASKATCHEWAN

	Written	Verbal	Total
Landlord:	0	0	0
Tenant:	1	0	1
Other:	0	0	0

GRANDE PRAIRIE

	Written	Verbal	Total
Landlord:	4	3	7
Tenant:	3	2	5
Other:	2	1	3

HINTON

	Written	Verbal	Total
Landlord:	0	0	0
Tenant:	1	0	1
Other:	0	0	0

INNISFAIL

	Written	Verbal	Total
Landlord:	0	0	0
Tenant:	1	0	1
Other:	0	0	0

LEDUC

	Written	Verbal	Total
Landlord:	0	0	0
Tenant:	1	0	1
Other:	0	0	0

LETHBRIDGE

	Written	Verbal	Total
Landlord:	3	0	3
Tenant:	2	1	3
Other:	6	0	6

MEDICINE HAT

	Written	Verbal	Total
Landlord:	0	0	0
Tenant:	1	0	1
Other:	3	3	3

MIDNAPORE

	Written	Verbal	Total
Landlord:	0	0	0
Tenant:	0	0	0
Other:	1	0	1

OLDS

	Written	Verbal	Total
Landlord:	0	0	0
Tenant:	0	0	0
Other:	2	0	2

PEACE RIVER

	Written	Verbal	Total
Landlord:	0	3	3
Tenant:	0	2	2
Other:	0	1	1

RED DEER

	Written	Verbal	Total
Landlord:	3	0	3
Tenant:	2	0	2
Other:	4	0	4

RIMBEY

	Written	Verbal	Total
Landlord:	0	0	0
Tenant:	1	0	1
Other:	0	0	0

SHERWOOD PARK

	Written	Verbal	Total
Landlord:	0	0	0
Tenant:	1	0	1
Other:	0	0	0

SLAVE LAKE

	Written	Verbal	Total
Landlord:	1	0	1
Tenant:	0	0	0
Other:	0	0	0

ST. ALBERT

	Written	Verbal	Total
Landlord:	3	0	3
Tenant:	0	0	0
Other:	1	0	1

STETTLER

	Written	Verbal	Total
Landlord:	0	1	1
Tenant:	0	0	0
Other:	0	0	0

TORONTO

	Written	Verbal	Total
Landlord:	1	0	1
Tenant:	0	0	0
Other:	0	0	0

WILLINGDON

	Written	Verbal	Total
Landlord:	0	0	0
Tenant:	1	0	1
Other:	0	0	0

WINTERBURN

	Written	Verbal	Total
Landlord:	0	0	0
Tenant:	1	0	1
Other:	0	0	0

TOTALS	217	77	285

Note: "Other" category includes property managers, advisory boards and other interest groups that could not be classified as strictly landlords or tenants. If a person provided written material AND made a presentation to the committee, they were classified under "Verbal".

19. APPENDIX "B" - COMMITTEE COMMUNITY TOUR SCHEDULE

The Committee made itself available to attend the following Alberta Communities on the dates indicated.

DATE	COMMUNITY
September 27	Wetaskiwin
September 28	Red Deer
September 29	Stettler
October 2	Calgary
October 3	Medicine Hat
October 16	Cardston
October 17	Hinton
October 18	Edson
October 19	Edmonton
October 26	Camrose
October 30	Grande Prairie
October 31	Peace River
November 2	Lethbridge
November 3	Brooks
November 6	Banff
November 8	Lloydminster
November 14	Fort McMurray
November 15	St. Paul
November 16	Bonneyville

As a result of no requests being made for attendances to make presentation to the Committee with respect to the legislative review the following Communities were not visited: Wetaskiwin, Stettler, Cardston, Hinton, Edson, Lethbridge, Brooks, Lloydminster, St. Paul, Bonneyville.

20. APPENDIX "C" - LEGISLATION REVIEWED

The Committee examined some aspects of all of the following jurisdictions' Landlord and Tenant Legislation:

1. British Columbia
2. Saskatchewan
3. Manitoba
4. Ontario
5. Quebec
6. Newfoundland
7. Nova Scotia
8. New Brunswick
9. Prince Edward Island
10. North West Territories
11. United Kingdom
12. Australia
13. New Zealand
14. Washington, USA
15. Montana, USA

21. APPENDIX "D" - RENT CONTROL BIBLIOGRAPHY

1. "Current Housing Problem", Milton Friedman and George J. Stigler reprinted from Popular Essays on Current Problems, Volume I, No. 2, 1946.

2. "Rent Control - Missing Realities", The Fraser Institute, 1981.

3. "Rent Control: The International Experience", D. John Deutsch Roundtable, Prof. Lawrence B. Smith, The University of Toronto, September 1987.

4. "Future Rental Housing", George Sternlieb, James W. Hughes, Center for Urban Policy Research, Rutgers University, New Jersey, 1981.

5. "Rent Control - Concepts, Realities and Mechanisms, Monica R. Lett, Center for Urban Policy Research, Rutgers University, 1976.

6. "Government Intervention in Housing Markets: An Overview", Eric B. Adams. Pearl Ing, Janet Ortved and Mary Jane Park, Research Study Commissioned by the Commission of Inquiry into Residential Tenancies in Ontario, Research Study No. 29.

7. "The Costs of Rent Review in Ontario", Ed Enid Slack, A Research Study Commissioned by the Commission of Inquiry into Residential Tenancies in Ontario, Research Study No. 26.

8. "Workable Rent Regulation: A Synthesis", Andrew Muller, A Research Paper Commissioned by the Commission of Inquiry into Residential Tenancies in Ontario, Research Study No. 27.

9. "Rent Controls in Ontario", Nicholas J. Patterson, Canadian Development Institute, Ottawa, Ontario, 1985.

10. "Residential Rent Controls-An Evaluation", Anthony Downs, The Urban Land Institute, Washington, D.C., 1988.

22. APPENDIX "E" -- SURVEY OF TENANTS, LANDLORDS AND PROPERTY MANAGERS

EXECUTIVE SUMMARY

- As part of its review of current provincial legislation, the Advisory Committee on Residential Tenancy engaged Prairie Research Associates to undertake a survey of landlords and tenants. The purpose of these surveys was to help determine:

  - the extent of problems and concerns of landlords and tenants; and,
  - the types of complaints made by landlords and tenants, especially in different dwelling types.

TENANT SURVEY

- A random number generator was used to draw a sample of telephone numbers. These numbers were in the same proportion as the telephone exchanges in the province.

- In total 604 individuals participated in the survey with 2036 calls being placed. The sample size provides a theoretical error rate of ± 4 percent (19 times out of 20). Overall, 18.5 percent of those eligible to participate refused. This compares favourably with other telephone surveys we have conducted.

- The respondent sample conforms closely to Census information on tenants. However, the data have been weighted to correct for gender differences and rural over-representation. This weighting makes no statistical difference to the results.

LANDLORD SURVEY

- A sample of 541 was constructed from the following sources:

  1) the Building Owners and Managers Association (BOMA) listing;
  2) the Yellow Pages listing for rental accommodation; and,
  3) classified ads in newspapers.

- A three-wave mail survey was sent to all individuals identified as owners, residential managers, or property managers.

- The first mailing consisted of a cover letter signed by the Chairman of the Committee on Residential Tenancy, the questionnaire, and a self-addressed return envelope (pre-stamped). Two weeks following this initial mailing a letter from Prairie Research Associates was sent to all individuals who had not then returned the survey. Finally, four weeks after the initial mailing, another letter, questionnaire and return envelope were mailed to those who had not responded.

- In total 358 surveys were returned. A total of 287 surveys were returned completed in time for inclusion in this analysis. This represents a response rate of 61 percent (287/470).

TENANT FINDINGS

- The data gathered from respondents suggest that there are no major problems common to the majority of renters. Problems do exist, but tenants, in general, do not feel exploited or uneasy in their relationship with landlords.

- Problems in the last two years were recorded in fairly large numbers, but the seriousness of these problems (a third have had problems with untended repairs or lack of upkeep) is less clear. Since over 60 percent of respondents agree that in general, landlords treat tenants fairly, it would seem that the majority of these problems are not serious.

- There seems to be some lack of knowledge as to some of the rights and privileges that renters have. Some confusion exists over damage deposit deductions and what constitutes normal wear and tear. For example, well over half indicated that they thought a deduction from their deposit for cleaning the carpet was legitimate. Of the respondents who had reported deductions in the last two years, half mention carpet cleaning as a reason.

- Most tenants appear to feel they have little recourse in dealing with a problem. While most would discuss it with the landlord there appears to be little knowledge of any other action that could be taken. An example is found in the fact that half the tenants stated that if their rent was increased "unfairly", they would move out. Besides talking to the landlord, respondents felt there was little else they could do.

- There are very few differences based on income and age. The higher the income, the more stable respondents' leasing arrangements are (ie., longer leases, longer notice for vacating, etc.). Those with lower family incomes were more likely to have complaints about their landlords. Younger respondents also have less stable leasing arrangements and more problems. While there are differences among respondents in different housing types, these are mostly in the type of rental arrangements they have (eg. verbal versus written lease).

LANDLORD FINDINGS

- The survey of landlords has demonstrated several important features of this vital segment of the housing market.

  - There is considerable diversity in opinion, with most respondents having a generally positive attitude toward tenants.

- Owners of smaller properties tend to have a slightly less favourable attitude toward tenants than managers (residential and property) in larger properties.

- There is a high degree of familiarity with the law, and most respondents reported using face-to-face discussions as their primary method for resolving disputes with the tenant.

- Most respondents agreed that there were a few problem tenants and there was some support for a clarified regulatory base to assist in these cases.

- In general, the level of concern over the current regulatory framework was not high. Clarification of the rules and regulations would be desirable.

o There appears to be some need for clarification regarding the rights and privileges of both landlords and tenants. Currently, there are some differences of opinion as to the powers of a landlord. This lack of understanding may result in a number of the problems which are cited by both groups. Obviously, the fact that most complaints are settled by discussion is a good indication that once the problem is clarified, some form of resolution results.

o Tenant and landlord concerns are often different. For example, tenants are much more likely than landlords to be concerned about the security systems found in rental accommodations.

o Generally, tenants and landlords have a favourable opinion of each other and the state of rental accommodations in Alberta.

23. INDEX OF RECOMMENDATIONS

RECOMMENDATION 1 **Pg 45**

The Committee recommends that the references to "commercial tenancies" be deleted from the Act entirely and that there be a statement to the effect that the Act applies only to residential tenancies.[152]

RECOMMENDATION 2 **Pg 51**

The Committee recommends that the definition of "residential premises" be expanded to include "any place occupied by an individual as a residence", subject to the following exceptions:

(a) Premises occupied for business purposes with living accommodation attached and rented under a single agreement;

(b) A single room, or series of rooms that do not comprise a self-contained dwelling unit occupied by the landlord;

(c) Accommodation provided to the travelling and vacationing public in a hotel/motel or motor hotel, resort, lodge, tourist camp, cottage or cabin establishment in campground, trailer park, tourist home, bed and breakfast establishment or farm vacation home where the tenant resides in the premises for a period less than six months;

(d) Accommodation provided by an educational institution to its students where:

(i) the accommodation is provided primarily to persons under the age of majority; or
(ii) all major questions related to the accommodation are decided after consultation with a Councillor or association representing the students.

(e) Nursing homes and some Senior Citizen lodges;

[152] Act, Section 2(2)

(f) Half-way houses for the mentally or physically disabled used primarily as a rehabilitative centre where placement in the facility if controlled by the treatment agency; and,

(g) Correctional institutions.

RECOMMENDATION 3 **Pg 52**

The Committee recommends that a definition of "tenant" should be added. The suggested definition is:

"Tenant" means a person who is party to or executes a tenancy agreement or is listed in the tenancy agreement as an occupant or is approved as a Tenant by the landlord expressly or by implication, and includes a Lessee, authorized occupant, authorized subtenant together with the heirs and successors of any of those individuals.

RECOMMENDATION 4 **Pg 53**

A definition of "landlord" should be added. The suggested definition is:

"Landlord" includes the owner, a person who permits or gives occupation while in ostensible control of residential premises, a Lessor, and any of their heirs, assigns and personal representatives and successors in title.

RECOMMENDATION 5 **Pg 54**

The Committee recommends that a definition of "rent should be added. The suggested definition is:

"Rent" includes consideration, whether in money, services or goods, paid, given or agreed to be paid or given by a tenant to a landlord in respect of residential premises, including consideration for a privilege, benefit, service, facility or other thing provided, directly or indirectly, by a landlord to a tenant that relates to the use, occupation, or enjoyment of residential premises, but does not include a security deposit or utility charge paid directly by a tenant.

RECOMMENDATION 6 **Pg 65**

The Committee recommends that landlords should be required to maintain their premises throughout the term of the tenancy. The suggested wording for an additional landlord's covenant[133] is:

"The landlord shall keep the premises (including common areas) in a reasonable state of repair and fit for habitation and shall comply with any statutory enactment or law respecting standards of health, safety or housing."

RECOMMENDATION 7 **Pg 67**

The Committee recommends that[134]:

(1) The landlord should be required to list in the lease agreement all the amenities rented with the suite.

(2) The landlord should have to give notice of a reduction in collateral services or amenities equivalent to that required for a rental increase (three months).

(3) The landlord should be required, through refurbishing, to maintain the standards and physical make-up of the suite as those factors existed at the beginning of the tenancy.

RECOMMENDATION 8 **Pg 73**

The Committee recommends that:

1. The landlord must have a "reasonable belief based on reasonable grounds" in order to enter the suite as a result of an emergency or in an abandonment situation.

2. The landlord should be required to give at least 24 hours notice, but not more than 30 days notice of any entry.

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[133] Act, Section 14

[134] Act, Section 14

3. Where the entry is for the purpose of carrying out normal repairs or decoration, the landlord should give at least 7 days notice.

4. Entry should be restricted to the hours between 8:00 a.m. and 8:00 p.m. and prohibited on Sundays or Holidays.

5. During the last month of the tenancy, entry should be permitted on Sundays and Holidays.

6. The landlord should be required to state a reason for the entry in the notice.

RECOMMENDATION 9 **Pg 75**

The Committee recommends that the name of the landlord and an address for service should be posted in the premises or served on the tenant at the beginning of the tenancy. Alternatively, the fee manager may be identified to the tenant and the fee manager's address shall be deemed to be the address for service of the landlord.

RECOMMENDATION 10 **Pg 81**

The Committee recommends that:

1. In a dispute about maintenance and repair issues the tenant should be able to access the Commission who will decide the legitimacy of the tenant's complaint and either order the landlord to make the repairs or allow the tenant to perform the repairs and deduct the cost from rent owing to the landlord.

2. Where collateral services have been reduced without notice, the tenant should be able to apply to the Commission for an abatement of rent.

RECOMMENDATION 11 **Pg 84**

The Committee recommends that the current remedies for the failure of the landlord to provide vacant possession or peaceful possession should be maintained.

RECOMMENDATION 12 **Pg 86**

The Committee recommends that the Act[155] be amended to include the following tenant covenant:

"The premises should not be used for any purpose in addition to use as residential premises, except with the consent of the landlord; such consent not to be unreasonably withheld subject to all applicable municipal zoning and land use bylaws and regulations."

RECOMMENDATION 13 **Pg 87**

The Committee recommends that:

1) the formation and activities of tenant associations should be explicitly recognized and approved in the legislation;

2) landlords should be prohibited from evicting a tenant if one of the reasons for such eviction is the tenant's involvement in the tenant association;[156]

3) landlords should be required to recognize, meet with and discuss tenant issues, in good faith with such tenant associations.

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[155] Act, Section 16

[156] See also 8.3.6 "Retaliatory Evictions", 8.3.4 "Tenant's Remedy for Improper Evictions"

RECOMMENDATION 14 **Pg 89**

The Committee recommends that:

1. "Normal wear and tear" should not include the removal of stains, dirt and debris accumulated by the tenant through the tenant's style of living.

2. This would be further accomplished by a change in the wording of the tenants' covenants[157] as follows:

   "The tenant shall be responsible for ordinary cleanliness and maintenance reasonably required under the circumstances and for damage caused by wilful or negligent conduct of the tenant or the tenant's invitees."

RECOMMENDATION 15 **Pg 91**

The Committee recommends that the proposed definition of "tenant" be used to prohibit an existing tenant from subletting the premises to unauthorized persons.

RECOMMENDATION 16 **Pg 93**

The Committee recommends that the landlord should have an eviction remedy if there are unauthorized tenants on the premises.

1) If the original tenant or authorized tenant has abandoned the premises, those remaining on the premises should be subject to a 24 hour eviction notice.

2) If the original tenant or authorized tenant is still occupying the premises the notice period should be one month.

RECOMMENDATION 17 **Pg 94**

The Committee recommends that the landlord should be entitled to sue or distrain to recover rent without terminating the tenancy.

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[157] Act, Section 16(f)

RECOMMENDATION 18 **Pg 95**

The Committee recommends that the Act should codify all aspect of residential tenancy law and refer to relevant rights and responsibilities in other Acts.

RECOMMENDATION 19 **Pg 97**

The Committee recommends that the provisions relating to repudiation[158] and the provisions[159] relating to acceptance of payments from overholding tenants be retained in their present form.

RECOMMENDATION 20 **Pg 100**

The Committee recommends that:

1. present 14 day notice period[160] with respect to the non-payment of rent be reduced to ten (10) days.

2. the tenant be allowed to nullify the notice if the amount of rent that is due and owing is paid in full within five (5) days of receipt of notice.

3. payment of rent after the five (5) days would not nullify the notice and the tenant would be required to give up possession of the premises at the end of the tenth day.

RECOMMENDATION 21 **Pg 102**

The Committee recommends that if the tenant has demonstrated his rent will "more likely than not" be paid late, the landlord should be able to apply for an order terminating the tenancy even though the tenant does eventually pay the rental arrears.

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[158] Act, Section 21

[159] Act, Section 22

[160] Act, Section 23

RECOMMENDATION 22 **Pg 104**

The Committee recommends that:

1) where it can be demonstrated that the tenant is causing substantial physical damage to the premises, the landlord should have the ability to evict on 24 hours notice;

2) this notice would have to be in writing and served upon the tenant personally;

3) the tenant would have the right to object to the notice[161] and the landlord could apply for an Order for possession after the objection.[162]

RECOMMENDATION 23 **Pg 107**

The Committee recommends that:

1) the dollar value of goods mentioned in the Act be increased to $1,000.00;

2) the storage period be reduced to 30 days;

3) the landlord be able to apply the sale proceeds against the tenant's "liabilities" to the landlord; and,

4) the landlord be required to justify or prove the "liabilities" of the tenant to a third party through a taxation procedure.

RECOMMENDATION 24 **Pg 112**

The Committee recommends that the Act contain clear definitions of fixed term and periodic tenancies which contain the following items:

[161] Act, Section 23(3)(a)

[162] Act, Section 23(4)

1) the definition of periodic tenancy should clearly provide that it is one which renews itself without notice at regular intervals whether that interval is weekly, monthly or some other period of time.

2) the definition for a fixed term tenancy should state that it is a tenancy entered into for a definite period. The tenancy will come to an end at the end of that fixed term.

3) the fixed term tenancy may provide for renewal of that tenancy either for a further fixed term or for periodic terms following the end of the fixed term.

RECOMMENDATION 25 **Pg 122**

The Committee recommends that:

1) the Act be amended to allow for the tenant to serve his notice to quit on the first day of the last month of the tenancy to be effective the last day of that month.

2) the Act state that transfer of possession of the premises will be at 12:00 noon on the final day of the tenancy.

3) the times stated in the Act should prevail unless the landlord specifically provides in the lease otherwise.

4) forms of notice should be standardized in a schedule to the Act.

RECOMMENDATION 26 **Pg 124**

The Committee recommends that:

1) The landlord be prohibited from terminating the tenancy for the following reasons:

   (a) Eviction solely for the purpose of raising the rent;

(b) Discrimination prohibited by Federal or Provincial legislation;
(c) Presence of children in the tenant's family, except a possible exception for residential complexes in which it is clearly stated that it is operated for households without children;
(d) Use of the residential premises by a friend or acquaintance of the landlord and not the landlord personally or to members of his immediate family;
(e) Retaliatory evictions as a result of the tenants complaining over the landlord's breach of covenants.

2) That if the tenant is able to show that termination occurred as a result of one of these causes, the tenant should be entitled to damages.

RECOMMENDATION 27 **Pg 129**

The Committee recommends that the tenant should have a remedy if the landlord evicts the tenant through a rent increase. The remedy should have the following features:

1) The tenant will be entitled to damages, including actual moving expenses and other costs if he can show that one of the purposes of the rent increase was eviction.

2) If a tenant actually vacated and within two months of vacating, the premises were not re-rented at a rate at least 90% of the total rental rate, the increase will be deemed to be for the purpose of eviction.

RECOMMENDATION 28 **Pg 131**

The Committee recommends that the new Act should provide protection from retaliatory evictions for a tenant who exercises his rights or remedies under this Act or any other laws or regulations which apply to residential premises.

RECOMMENDATION 29 **Pg 132**

The Committee recommends that the present one clear tenancy month's notice, required to be given by a tenant of his intention to vacate the premises, under the terms of a month to month tenancy, should be maintained.

RECOMMENDATION 30 **Pg 136**

The Committee recommends that the landlords breach of the minimum notice period for termination of a tenancy that arises from employment be made an offence under the Act.

RECOMMENDATION 31 **Pg 141**

The Committee recommends that landlords continue to be permitted to request security deposits.

RECOMMENDATION 32 **Pg 142**

The Committee recommends that the definition of "security deposit" should refer not only to liabilities of the tenant to the landlord (inclusive of rental arrears) but to those that may attach to the premises.

RECOMMENDATION 33 **Pg 143**

The Committee recommends that the maximum of one month's rent should be maintained as the maximum for the security deposit.

RECOMMENDATION 34 **Pg 145**

The Committee's recommends that the security deposit be fixed throughout the tenancy at a maximum amount equivalent to the amount of rent paid by the tenant during the first month of the tenancy.

RECOMMENDATION 35 **Pg 150**

The Committee recommends that all extra deposits and conditional fees be prohibited.

RECOMMENDATION 36 **Pg 153**

The Committee recommends that the use of an inspection report, be made mandatory. The pre- and post-occupancy report would have the following features.

RECOMMENDATION 37 **Pg 158**

The Committee recommends that:

1) At a minimum, the new Act should require the landlord to keep the security deposit funds in a trust account separate from the landlord's general revenue.

2) Interest on the security deposits should be paid to the tenant annually.

RECOMMENDATION 38 **Pg 162**

The Committee recommends that an alternative to, and in preference to the recommendation made above:

1) A Residential Tenancy Commission be created; authorized to receive and administer security deposits and to quickly resolve disputes arising from them.

2) The Commission should be self-funding, from interest earned on the security deposit holdings.

RECOMMENDATION 39 **Pg 164**

The Committee recommends that the procedures used by the proposed Residential Tenancy Commission should be easy to use by both landlords and tenants and provide a prompt, final decision. A proposed mechanism is suggested by the Committee.

RECOMMENDATION 40 **Pg 170**

The Committee recommends that rent control not be imposed in Alberta.

RECOMMENDATION 41 **Pg 172**

The Committee recommends that:

1) A rental increase should not be permitted any more frequently than three clear tenancy months from any prior increase.

2) This limitation should not apply when a new tenant is moving into the premises.

RECOMMENDATION 42 **Pg 185**

The Committee recommends that a Residential Commission be established to deal with all landlord and tenant matters in Alberta.

RECOMMENDATION 43 **Pg 188**

The Committee recommends that:

1) Subsidized public housing programs continue to receive support and that they be expanded in areas of demonstrated need.

2) A separate part of the Act should be added to recognize subsidized public housing and to modify the general provisions of the Act to ensure proper operation of these programs.

RECOMMENDATION 44 **Pg 188**

The Committee recommends the following definition of "subsidized public housing" be added to the Act:

"subsidized public housing" means a rental unit rented to persons or families of low or modest income at reduced rents by reason of public funding provided by the Government of Canada, Alberta or a municipality, or by any agency thereof, pursuant to the National Housing Act (Canada), the Alberta Mortgage and Housing Corporation Act, and where the amount of the reduced rent is determined by the income of the tenant."

RECOMMENDATION 45 **Pg 191**

The Committee recommends that, for subsidized public housing only:

1) *"Rent" shall mean: that percentage figure which, when applied to the income of the tenants determines both the tenants eligibility for entitlement to subsidized public housing and the amount of payment therefore."*

2) The rent abatement system should be exempted from the three month notice period ordinarily required for an increase in rent.

RECOMMENDATION 46 **Pg 193**

The Committee recommends that subsidized public housing authorities have the ability to evict tenants for the following reasons in addition to the existing causes in the Act:

1) Change in family size;

2) Failure to continue to qualify for programs;

3) Transfer of units in or out of the program;

4) Failure to report income as required.

The Committee recommends a three month notice period for these causes.

RECOMMENDATION 47 **Pg 198**

The Committee recommends that:

1) Residential property managers be licensed and regulated under the Real Estate Agents' Licensing Act;

2) Property managers should be treated separately from real estate brokers;

3) The licensing requirement should extend to individuals who derive a significant portion of their livelihood from the rental of residential premises. Possibly this could be defined as anyone who leases more than ten residential units.

RECOMMENDATION 48 **Pg 200**

The Committee recommends that the new Act must promote public education on landlord and tenant issues.

RECOMMENDATION 49 **Pg 201**

The Committee recommends that, where there is a written lease document used by the landlord, the lease should contain at the foot or end, in larger print than the remainder of the lease, the following:

"Notwithstanding the terms of this lease, this landlord and tenant relationship is governed by the terms of the Residential Tenancy Act."

RECOMMENDATION 50 **Pg 201**

The Committee recommends that:

1) The Department of Consumer and Corporate Affairs and the proposed Residential Tenancy Commission could expand current programs and develop new ones on the area of public education on landlord and tenant issues.

2) Being literate in the area of landlord and tenant relationships is a fundamental life skill and the Department should consider recommending to Alberta Education that it form a portion of the mandatory curriculum in elementary education.

RECOMMENDATION 51 **Pg 208**

The Committee recommends that:

1) Consultation should take place between the Province, the Federal Government and Parks Canada with a view to addressing the housing problems.

2) A combination of lifting development restrictions with a view to increasing the supply of rental accommodation, together with imposing some rent controls should be considered for Banff.

RECOMMENDATION 52 **Pg 212**

The Committee recommends that:

1) the Institute's proposed wording for Sectin 40 be adopted;

2) if the Commission is established, these sections could be abolished since security deposits would be held by the Commission.

RECOMMENDATION 53 **Pg 214**

The Committee recommends that if a Commission is established the Landlord and Tenant Advisory Boards be abolished.

RECOMMENDATION 54 **Pg 215**

The Committee recommends that a transitional provision should be in effect for a period of one year from the enactment of new legislation to allow smaller commercial tenants an opportunity to rearrange their affairs.

RECOMMENDATION 55 **Pg 215**

The Committee recommends that:

1) if the Commission is established to deal only security deposit issues, the Provincial Court's jurisdiction should be eliminated,

2) if a Commission is established to deal with all residential tenancy matters, all references to "Court" could be deleted from the Act.

RECOMMENDATION 56 **Pg 217**

The Committee recommends that breaches in the following areas of should also be made offenses under the Act:

1) landlord responsibility for the physical condition of the rental complex, which includes the compliance with all applicable building codes and regulations as recommended by the Committee.[163]

2) timing of rental increases[164],

3) improper notice to terminate, either due to cause or timing[165],

4) disturbance of the tenant's peaceful enjoyment of the premises.[166]

RECOMMENDATION 57 **Pg 218**

The Committee recommends that the current provisions[167] that state that the tenant is not able to waive the rights provided in the Act should be maintained. Not only should the tenant be directed to the Act in the lease document, but, despite the contents of the lease, the tenant should also have the guarantee of having the minimum rights under the Act.

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[163] See 6.1.1 "Landlord's Duty to Repair, Maintain and Clean"

[164] See 10. "Rent Increases and Rent Control"

[165] See 6.2.2 "Peaceful Possession"

[166] See discussion "landlord obligations"

[167] Act, Section 2 (4)